

FALKO TERMS AND CONDITIONS OF SALE (SEPTEMBER 2016)

PARTIES

- (1) **FALKO REGIONAL AIRCRAFT LIMITED** a company incorporated in England (Company No. 07644196) and having its registered office at 1 Bishop Square St Albans Road West Hatfield Herts AL10 9NE acting on its behalf or on behalf of various owners of the Goods (in these conditions, referred to as "**FALKO**").
- (2) The person purchasing the Goods from FALKO and identified as the Customer on the Quotation or Contract (the "**Customer**").

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 In this document:

"**Applicable Laws**" means all applicable laws, regulations, regulatory requirements and codes of practice of any jurisdiction, as amended and in force from time to time.

"**Appropriate Authority**" means the Civil Aviation Authority of the United Kingdom, or the United States Federal Aviation Administration, or any other airworthiness authority having proper jurisdiction in respect of the matter in question.

"**Affiliate**" means, in relation to any person, any person directly or indirectly controlling, controlled by or under common control with that person.

"**Business Day**" means any day which is not a Saturday, Sunday or public or bank holiday in England.

"**Confidential Information**" means all information, which might fairly be considered to be of a confidential nature, in the Discloser's possession or control, whether such information was created before or after the date of the Contract, whatever the format of such information, and whether or not such information is marked "confidential" in any way, including all financial, technical, operational, commercial, employee, management and other information, data, experience and expertise of whatever kind (including information relating to trade secrets, inventions, discoveries, know-how, designs, operations, processes, plans, intentions, product information and development, manufacturing and engineering and production processes, marketing opportunities and sales information, financial information and plans, historic and current and future transactions, affairs and/or business) of the Discloser and/or its customers, suppliers, subcontractors and other members of its Group,

but not including information which:

- (a) is in the public domain at the time of disclosure or which subsequently comes into the public domain through no fault of the Recipient;
- (b) was already lawfully in the possession of the Recipient prior to its disclosure by the Discloser;

- (c) is subsequently disclosed to the Recipient by a third party who did not obtain it (directly or indirectly) from the Discloser or from someone owing a duty of confidence to the Discloser; or
- (d) is developed by any of the Recipient's employees, officers, agents or subcontractors independently as a result of his own efforts, without access to, or use or knowledge of, the relevant part of the Discloser's Confidential Information.

"Contract" means the contract for the sale of the Goods, which will exist notionally or in writing once FALKO has accepted the Purchase Order or entered into a written contract for sale.

"Delivery" means (i) the delivery of the goods as set out in Clause 7.1, or (ii) the shipping of the goods as set out in Clause 7.5 hereto, as appropriate.

"Delivery Address" means Tigers Global Logistics Ltd, Slough, Berkshire, England, or such other place which FALKO gives the Customer notice of, from time to time.

"Delivery Date" means the date(s) on which the Goods will be delivered or available for collection, for the purposes of this Contract being the date(s) specified in the Quotation, or such other date(s) of which FALKO gives the Customer notice from time to time.

"Discloser" means the party disclosing (or which has disclosed) the relevant Confidential Information to the Recipient or on whose behalf the relevant Confidential Information has been disclosed.

"FALKO IPR" means IPR created, owned, licensed to or used by or on behalf of FALKO or its Affiliates in the course of the supply of the Goods including IPR in Confidential Information.

"Goods" means the goods (including any part of them and any part delivered in stages) described in the Quotation. To be clear, "Goods" includes materials, spares, equipment, raw materials, finished or semi-finished materials or articles, machinery or commodities. A reference to Goods includes individual items, or a number of items, whether or not identical or similar.

"Group" means a party, its parent undertaking and the subsidiary undertakings of its parent undertaking.

"Insolvent" means any person who:

- (a) is or becomes deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or otherwise confirms in writing that it is unable to pay its debts when they fall due;
- (b) ceases to carry on its business or substantially the whole of its business or threatens to cease to carry on the same or substantially changes the nature of its business;
- (c) has all or any part of its property or undertaking compulsorily acquired by or by the order of any local or other authority or is disposed of, encumbered or otherwise dealt with by any such authority;

- (d) passes an effective resolution or an order is made against it for its winding up (other than a solvent re-organisation of the party to which the other party has provided its prior written approval);
- (e) has a receiver, administrative receiver or receiver or manager appointed over all or any material part of its property, assets or revenues or any encumbrancer takes possession of all or a material part of its property, assets or revenues; or
- (f) suffers an application being made for the appointment to it of an administrator (as such term is defined in the Insolvency Act 1986) or a notice of intention to appoint an administrator is filed in respect of it;
- (g) proposes or commences negotiations for a voluntary arrangement under section 1 of the Insolvency Act 1986, a scheme of arrangement under section 425 of the Companies Act 1985 or any other arrangement, composition or compromise of its debts generally or any class of its debts;
- (h) becomes subject to any distress, execution, sequestration or other process levied or enforced upon or sued out against any material part of its property, assets or revenues and such distress, execution, sequestration or other process is not removed, discharged or paid out within 15 Business Days of such person becoming aware of the same having been levied, enforced or sued out; or
- (i) becomes subject to any circumstances or events in any country or territory in which it carries on business or to the jurisdiction of whose courts it or any of its assets is subject which correspond with or have an effect equivalent or similar to any of those mentioned above.

"IPR" means all vested and future rights of copyright and related rights, design rights, database rights, patents, rights to inventions, trade marks and get-up (and goodwill attaching to those trade marks and that get up), domain names, applications for and the right to apply for any of the above, moral rights, goodwill (and the right to sue for passing off and unfair competition), rights in know-how, rights in confidential information, rights in computer software and semiconductor topographies, and any other intellectual or industrial property rights or equivalent forms of protection, whether or not registered or capable of registration, and all renewals and extensions of such rights, whether now known or in future subsisting in any part of the world.

"Malpractice" includes giving or receiving any financial or other advantage that may be construed as a bribe, whether for the purpose of the Bribery Act 2010 or any other Applicable Law.

"Price" means the aggregate price of the Goods as stated in the Quotation and, where relevant, the price of delivery of the Goods.

"Purchase Order" means a written offer made by the Customer to FALKO to purchase the Goods on the terms set out in the Quotation.

"Quotation" means FALKO's sales quotation in respect of the provision of the Goods.

"Recipient" means the party receiving (or which has received) the Discloser's Confidential Information.

"Special Conditions" means the special conditions (if any) described in the Contract or Quotation.

"Terms and Conditions" means these terms and conditions, and where the context so requires any Special Conditions.

"VAT" means value added tax or any locally applicable equivalent sales tax.

1.2 In these Terms and Conditions:

- (a) a statute or statutory provision includes a reference to:
 - (i) any statutory amendment, consolidation or re-enactment of it to the extent in force from time to time;
 - (ii) all orders, regulations, instruments or other subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) made under it to the extent in force from time to time; and
 - (iii) any statute or statutory provision of which it is an amendment, consolidation or re-enactment;
- (b) a "person" includes a legal or natural person, partnership, association, trust, company, corporation, joint venture, government, state or agency of the state or other body;
- (c) a governmental, local governmental, regulatory or administrative authority or agency includes its successors;
- (d) the terms "holding company", "subsidiary", "parent undertaking", "subsidiary undertaking" and "wholly-owned subsidiary" shall be interpreted in accordance with the Companies Act 2006 , and the term "associated company" shall be interpreted in accordance with section 449 of the Corporation Tax Act 2010; and
- (e) any agreement (including the Contract) or other document or the provisions of them is a reference to that agreement, document or provision as amended, novated, supplemented, extended, restated or replaced from time to time.

1.3 The headings in these Terms and Conditions are for ease of reference only and are to be ignored when interpreting the Terms and Conditions.

1.4 In the Terms and Conditions the interpretation of general words shall not be restricted by words indicating a particular class or particular examples.

1.5 In the Terms and Conditions, unless otherwise stated, time shall not be of the essence for the performance of any obligation.

2 **APPLICABILITY**

All Quotations, Purchase Orders, invoices, contracts of sale or other documents relating to the sale, supply, pricing or payment of or in respect of the Goods shall be governed by these Terms and Conditions and shall apply to the exclusion of, and shall prevail over, all other terms and conditions, including any terms or conditions contained in or referred to in any documentation submitted by the Customer (including, without limitation, any Purchase Order, confirmation of order

or similar document), or in any correspondence or elsewhere or implied by trade custom, practice or course of dealing, unless specifically excluded or varied in writing by a director or other authorised representative of both parties.

3 FORMATION OF THE CONTRACT

3.1 Any Quotations supplied by FALKO shall be deemed to be an invitation to place a Purchase Order and are not offers capable of acceptance so as to result in a binding contract of sale.

3.2 Any Purchase Orders placed with FALKO shall be deemed to be an offer to purchase the Goods subject to these Terms and Conditions and shall require acceptance by FALKO in writing (which shall include via email or facsimile) prior to any contract of sale being formed. Such acceptance shall be dependent on, inter alia, the continued availability of the Goods.

3.3 The Quotation will lapse unless unconditionally accepted by the Customer via a Purchase Order within 30 days of its date. Once the Customer has submitted the Purchase Order and FALKO has accepted the Purchase Order, a binding contract is formed.

3.4 Any Delivery Date specified in either the Quotation or Purchase Order shall be an estimated date.

3.5 Nothing in these Terms and Conditions affects the liability that either party may have to the other for fraudulent misrepresentation.

3.6 The Customer in placing any order or entering into or varying any agreement with FALKO represents and warrants that the Customer has the full power, authority and legal right to execute, deliver and perform the terms of the Contract or variation and that the Contract or variation has been duly authorised by the necessary corporate action of the Customer as required by the jurisdiction of its incorporation and will continue to be a valid and binding Contract.

4 DESCRIPTION OF THE GOODS

4.1 The quantity, condition and description of the Goods will be as specified or referred to in the Quotation or as otherwise agreed in writing by FALKO.

4.2 The Customer is responsible for:

- (a) ensuring the accuracy of the terms of all orders; and
- (b) giving FALKO, upon request by it, any information and documentation which FALKO reasonably requires in order to comply with its quality control procedures in force from time to time.

5 PRICE OF THE GOODS

5.1 The Customer shall pay FALKO the Price for the Goods.

5.2 The Price will be as stated in the Quotation, or Contract (as applicable), and, unless otherwise so stated, will be:

- (a) exclusive of any duties, custom or levies (including any VAT), which the Customer shall pay in addition to the Price at the rate prevailing on the

date that the relevant Goods were supplied, and in the manner prescribed by Applicable Law, as and when due;

- (b) exclusive of any additional taxes, duties, charges and levies which may become payable as a result of the supply of the Goods. The Customer shall pay such additional taxes, duties, charges and levies as and when due;
- (c) inclusive of all charges for packaging the Goods for air freight (in compliance with ATA-300 or any amendment to, or replacement of, that standard from time to time); and
- (d) made without any deduction or any withholding (whether in respect of set-off, counterclaims, taxes charges, discount, abatement or otherwise howsoever arising) all of which shall be for the account of the Customer.

5.3 If FALKO is required to pay any taxes, duties, custom or levies on the Customer's behalf, the Customer will reimburse FALKO immediately on demand.

5.4 FALKO reserves the right, by giving the Customer notice in writing at any time prior to the Delivery Date, to increase the Price by a reasonable amount to reflect any increase in the supply of the Goods (so as to put FALKO in the same position, in terms of profitability, as it would have been in, had such increase in the supply of the Goods to FALKO not occurred) as a result of any:

- (a) increases in the cost of labour, materials or other costs of manufacture of the Goods; and/or
- (b) changes to Applicable Law relating to the manufacture or packaging of the Goods; and/or
- (c) variation of the Contract, including any change of delivery dates, quantities or specifications effected at the request of the Customer; and/or
- (d) delay caused by any instructions, act or omission of the Customer including any failure of the Customer to give FALKO adequate information or instructions; and/or
- (e) increase in the costs of FALKO in performing its obligations under the Contract which is due to any factor beyond the control of FALKO.

Any such increased cost shall be payable as if included in the Contract.

5.5 Where the Price is varied in accordance with Clause 5.4, such variation will be binding on the Customer and will not give the Customer the right to cancel the Contract.

5.6 All prices are based on the assumption that Delivery shall occur within the timeframes specified in the Quotation. Should the Customer require an expedited Delivery or Delivery which requires FALKO to work during non-Business Days or hours in order to meet the delivery timescales requested, then the Price is subject to escalation as agreed in writing between the parties prior to the Delivery. Any costs incurred by FALKO as a result of any such requests, which are not able to be agreed in writing before Delivery shall be reimbursed by the Customer in full following Delivery on submission by FALKO of evidence of such costs.

6 **TERMS OF PAYMENT**

- 6.1 For Customers without a credit account, FALKO will invoice the Customer for the Price (or instalments of the Price) on, or at any time after the date of FALKO's acceptance of the Purchase Order. Goods will not be released until the required payment has been made in full to the account specified by FALKO in the invoice, and the funds have cleared. All payments are to be made in the currency specified in the invoice. All payments are to be made in the currency and within the time frame specified in the invoice.
- 6.2 For Customers with a credit account, FALKO will invoice the Customer for the Price (or instalments of the Price) on, or at any time after the date of release of the Goods. The Customer will pay the Price in the currency specified in the invoice in immediately available funds to FALKO's nominated bank account specified in the invoice, or such other bank account of which FALKO gives the Customer notice, within thirty (30) days of the date of FALKO's invoice. Time of payment of the Price will be of the essence.
- 6.3 If the Customer does not make payment within the payment terms set out in the invoice, then without limiting any other remedy available to FALKO, FALKO may:
- (a) immediately terminate the Contract (in whole or in part) or suspend all further deliveries until payment has been made in full. Any additional costs and expenses of whatever nature incurred by FALKO as a result of any termination or suspension will be paid by the Customer; and/or
 - (b) charge interest on such outstanding sums from time to time at the rate of 5% per annum above the base lending rate of the Bank of England from the date that payment should have been made until the date that payment in full has been received by FALKO (whether before or after judgment), such interest being calculated on a daily basis. In addition the Customer will reimburse all costs and expenses (including legal costs) incurred by FALKO in the collection of any overdue amount.
- 6.4 If the Customer fails to collect/take delivery of the Goods on the Delivery Date or if FALKO is prevented from performing any of its obligations under the Contract as a result of any act or omission on the Customer's part, FALKO will be entitled (without affecting any other rights or remedies which FALKO may have) to invoice the Customer for the Price and payment will be due as if Delivery of the Goods had been effected. In such event the Customer will be liable for and will promptly reimburse FALKO (if FALKO so requests) for all costs and expenses incurred by FALKO up to the time of actual collection of the Goods in accordance with Clause 6.3.
- 6.5 The parties agree that Clause 6.3(b) is a substantial remedy and is fair for the purposes of section 8 of the Late Payment of Commercial Debts (Interest) Act 1998.

7 DELIVERY

- 7.1 Unless the Contract expressly provides otherwise, delivery of the Goods will be effected by FALKO making the Goods available for collection by the Customer at the Delivery Address on the Delivery Date as evidenced by the delivery note. Countersignature of the delivery note by the Customer is evidence that the Customer accepts the Delivery of the Goods and that the Goods are in the condition as specified in the Quotation.
- 7.2 Where the Contract provides for Delivery of the Goods in stages, each Delivery will be treated as taking place under a separate contract and default or delay by FALKO in effecting any single Delivery will not entitle the Customer to terminate the Contract as a whole.
- 7.3 The Customer will collect the Goods on the Delivery Date from the Delivery Address (or shall take delivery of the Goods on the Delivery Date in accordance with Clause 7.5). If the Customer fails to collect / take delivery of the Goods on the Delivery Date then, without limiting any other right available to FALKO (including as set out in Clause 6.4), FALKO may at its sole option:
- (a) store the Goods until actual delivery and charge the Customer for the reasonable costs of (i) storage (including insurance, preservation and demurrage charges), (ii) transportation of the Goods between the Customer's or Falko's premises (as the case may be) and the storage site, and (iii) any other charges reasonably incurred by FALKO. To be clear, FALKO will be entitled to exercise a right of lien over the Goods in respect of payment of such costs and charges; or
 - (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Customer for any shortfall below the Price. Any amount received by FALKO over and above the Price shall be retained by FALKO.
- 7.4 The Customer will procure that any of the Customer's representatives attending any of FALKO's premises will comply with all regulations that apply to such premises, including all applicable security and health and safety regulations.
- 7.5 The Price does not include any carriage, freight (other than packaging for freight in terms of Clause 5.2(c)), insurance or any other transport costs, unless specifically itemised within the Quotation. If FALKO and the Customer agree that FALKO will arrange or undertake the carriage, freight, insurance or transport of the Goods for delivery other than by collection by the Customer of the Goods on the Delivery Date from the Delivery Address ("**Shipping**"), then such costs will be for the Customer's account. All such costs shall be paid to FALKO by the Customer prior to Shipping. However if FALKO incurs any additional costs or costs which cannot be paid prior to Shipping then such costs shall still be borne by the Customer, who shall reimburse them to FALKO. Countersignature of the delivery note by the Customer is evidence that the Customer accepts the Shipping of the Goods and that the Goods are in the condition as specified in the Quotation.
- 7.6 Unless FALKO has agreed otherwise in writing, the Delivery Date is an estimate only, made in good faith, and FALKO will not be liable for the consequences of any delay and time of Delivery or performance by FALKO will not be of the essence of the Contract. FALKO will use its reasonable endeavours to meet any such estimated date.

8 RISK AND PROPERTY

- 8.1 The Customer acknowledges that in respect of the Contract, FALKO acts both on its own behalf and on behalf of various owners of the Goods.
- 8.2 Risk of damage to, or loss of, the Goods will pass to the Customer on Delivery of the Goods to the Customer or the Customer's representatives or, if the Customer wrongfully fails to collect / take delivery of the Goods, the time when FALKO has tendered Delivery of the Goods. To be clear, where Clause 7.5 applies, FALKO will have no liability for Goods damaged or lost in transit.
- 8.3 Any Goods returned by the Customer to FALKO will remain at the Customer's risk except where the Goods have been returned by prior arrangement with FALKO, in which case the Goods will be at the risk of FALKO from the time of receipt by FALKO as evidenced by a countersigned delivery note.
- 8.4 Although risk in the Goods will pass to the Customer in accordance with Clause 8.12, title to the Goods will remain with FALKO or the relevant owner of the Goods (as applicable) until FALKO has received in cash or cleared funds, all sums due to it in respect of:
- (a) all Goods supplied to the Customer; and
 - (b) all other sums which are or become due to FALKO under this Contract.
- 8.5 Until such time as the title to the Goods has passed to the Customer, the Customer agrees (unless FALKO agrees in writing that these requirements will not apply) that:
- (a) the Customer shall hold the Goods on a fiduciary basis as FALKO's bailee;
 - (b) the Customer will store the Goods in a warehouse or other suitable premises, keep the Goods entirely separate from the Customer's goods and those of third parties and keep the Goods properly protected, insured (at the Customer's own expense for their full price against all risks to the reasonable satisfaction of FALKO) and readily identifiable as FALKO's property. If so requested the Customer shall provide FALKO with evidence of the insurance;
 - (c) the Customer shall not destroy, deface, obscure any identifying mark or packaging on or relating to the Goods;
 - (d) FALKO or its agent may (without limiting any other rights it may have) recover the Goods. The Customer hereby grants, and shall procure that any third party which holds the Goods shall grant, an irrevocable right and licence to FALKO's employees, agents and contractors to (i) enter all or any premises where Goods are stored without prior notice to inspect the Goods or to recover them; and (ii) enable FALKO to exercise its rights in terms of these Terms and Conditions, including monitoring the Customer's compliance hereto. Such right shall be exercisable at any time after delivery or collection of the Goods. FALKO may use or dispose of such Goods as it wishes;
 - (e) FALKO may require delivery to it of all or any part of the Goods at the Customer's expense; and/or
 - (f) the Customer may:

- (i) sell the Goods on a bona fide arm's length basis to the Customer's customers on normal commercial terms with the Customer as principal, but the Customer will not otherwise dispose of the Goods; and/or
 - (ii) use or install the Goods in aircraft belonging to the Customer in the ordinary course of the Customer's business, but not otherwise.
- 8.6 The Customer will not be entitled to pledge any of the Goods which remain FALKO's property or in any way charge them by way of security. If the Customer does so, then all moneys owing by the Customer to FALKO will (without limiting any other rights that FALKO may have) immediately become due and payable.
- 8.7 The Customer's right of possession of the Goods shall be terminated immediately if the Customer has a bankruptcy order made against it or makes an arrangement of any sort with its creditors, or is otherwise declared Insolvent.
- 8.8 FALKO, or the relevant owner of the Goods (as applicable), may recover payment for the Goods notwithstanding the fact that title to the Goods has not passed to the Customer.
- 8.9 The Customer's obligation to pay the Price and to perform all of its other obligations under the Contract in accordance with these Terms and Conditions, on time, is absolute and unconditional in all respects, regardless of the occurrence of any supervening events or circumstances (whether or not foreseen and whether or not fundamental in the context of the arrangements contemplated by the Contract).
- 8.10 On termination, FALKO's (but not the Customer's) rights contained in Clause 8 (*Risk and Property*) and Clause 9 (*Proceeds of sale*) shall remain in effect.

9 **PROCEEDS OF SALE**

Without prejudice to Clause 8.1:

- (a) if the Customer resells or uses the Goods in which title remains with FALKO or the relevant owner of the Goods (as applicable) in accordance with Clause 8.5(f), it shall be liable to account to FALKO in respect of the proceeds of sale or otherwise of such Goods, whether tangible or intangible, including insurance proceeds;
- (b) the proceeds of any resale by the Customer of Goods in terms of Clause 8.5(f) will be held in trust for the benefit of FALKO and placed in a separate account until accounted for by the Customer to FALKO;
- (c) the Customer shall maintain records of the persons to whom it sells or disposes of such Goods and of the payments made by such persons for such Goods and shall allow FALKO to inspect these records and the Goods themselves on request; and
- (d) FALKO may trace the proceeds of sale or otherwise of such Goods.

10 **WARRANTIES AND LIABILITY**

- 10.1 Where agreed between the parties in writing, FALKO shall where possible assign to the Customer the benefit of any warranty it has received from its supplier, in respect of the Goods that have been supplied.

- 10.2 FALKO gives no warranty or guarantee in respect of fitness for use, purpose, quality or condition of the Goods, and any conditions, warranties, guaranties or representations whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by Applicable Law. In particular, FALKO does not warrant that:
- (a) the Goods will meet the Customer's particular requirements, whether or not those requirements have been made known to FALKO; or
 - (b) the Goods are of satisfactory quality or fit for any particular purpose.

The provisions of this Clause 10 (*Warranties and liability*) represent the entire liability of FALKO, its principal, officers, employees and agents with respect to any matter arising out of or in connection with the quality or condition of the Goods or any part thereof.

- 10.3 If the Customer informs FALKO within sixty (60) days of Delivery that any Goods or any part of them do not match the description as set out in the Quotation and as a result FALKO agrees in writing to accept the return of said Goods, then those Goods that are returned to FALKO by the Customer, and for which a refund or replacement is given, shall belong to FALKO.

- 10.4 The Customer will keep FALKO indemnified against, and hold FALKO harmless in respect of, all costs, claims, demands, expenses and liabilities of whatever nature (including legal costs and expenses) made by third parties and caused in whole or in part by, or arising out of, any act or omission of the Customer, the Customer's employees or agents in connection with the Goods to the extent that the same are caused by or related to:

- (a) any claim for personal injury or death or loss or damage directly or indirectly occasioned by default (including non-compliance with any statutory or other obligation in relation to the Goods), failure to follow FALKO's instructions (whether oral or written), or misuse or mal-operation of the Goods by or on the Customer's part or on the part of any person or persons other than on behalf of FALKO;
- (b) the improper incorporation, assembly, use, processing, storage or handling of the Goods by the Customer.

This indemnity will continue in force even if the Contract is terminated.

- 10.5 The Customer shall indemnify FALKO against any claim that may be made against FALKO arising from the Customer's lack of authority to contract for the supply of the Goods.

- 10.6 The Customer warrants to FALKO that none of the Customer and (if applicable) any of its subsidiaries or, to the knowledge of the Customer, any director, officer or employee of the Customer:

- (a) is a person who is the target of any sanctions law or embargo in force either in the United Kingdom, the United States of America or the European Union;
- (b) is located, organised, or resident in a country or territory that is, or whose government currently is, the target of national sanctions imposed or administered by the United States Office of Foreign Assets Control ("**OFAC**"), the United States Department of State, the United Nations

Security Council, the European Union ("EU") and/or any EU Member State, HM Treasury or any other relevant sanctions authority;

- (c) is directly or indirectly owned or controlled by any person or entity currently included on any of:
 - (i) the list of Specially Designated Nationals and Blocked Persons and/or the Foreign Sanctions Evaders List maintained by OFAC;
 - (ii) the list of Designated Persons (terrorism and terrorist financing) maintained by HM Treasury;
 - (iii) the consolidated list of targets subject to EU and UK financial sanctions as maintained by HM Treasury.

10.7 The Customer warrants to FALKO that the Customer will not, directly or indirectly, sell, supply, transfer, export or make available the Goods to any subsidiary, other affiliate of the Customer, joint venture partner or other person or entity in any manner that would result in a breach of any applicable export controls, embargoes or regulations, or a violation of any sanctions administered or enforced by OFAC, the United States Department of State, the United Nations Security Council, the EU and/or any EU Member State, HM Treasury or any other relevant sanctions authority.

10.8 The Customer will keep FALKO indemnified against all costs, claims, demands, expenses and liabilities of whatever nature (including legal costs and expenses) caused in whole or in part by, or arising out of, any breach of Clauses 10.6 and 10.7.

11 **INTELLECTUAL PROPERTY**

11.1 Except as expressly provided in this Contract, the Customer will not have any rights in respect of any of FALKO's IPR or in any associated goodwill and the Customer acknowledges that, except as expressly provided in the Contract, the Customer will not acquire any rights in respect of any of FALKO's IPR or any of their licensors' IPR or any associated goodwill and that all such rights and goodwill are, and will remain, vested in members of FALKO and its Affiliates or their licensors.

11.2 Where the Quotation refers to, or includes, within the description of the Goods, items which incorporate any of FALKO's Confidential Information and/or FALKO's IPR, the Customer is given a limited licence to use such Confidential Information and/or FALKO's IPR for the purposes contemplated by the Contract, subject to any conditions set out in the Quotation or in these Terms and Conditions. The licence will automatically come to an end on the fulfilment or accomplishment of the purposes contemplated by the Contract or breach of any term of the Contract, whichever happens sooner.

11.3 The Customer will, at the expense of FALKO, take all such steps as FALKO may reasonably require to assist FALKO and its Affiliates in maintaining the validity and enforceability of FALKO's IPR during the continuance of the Contract.

11.4 Any liability of FALKO in respect of infringement of any third party IPR by the Goods or any part of them will be limited to Goods of FALKO's designs or manufactured to designs of FALKO or its Affiliates (unless otherwise stated by FALKO) and such liability will only be in respect of infringement arising in the United Kingdom. In the event of such infringement, FALKO's obligations will be limited to (at FALKO's option):

- (a) replacing the infringing Goods with non-infringing Goods;
 - (b) securing at its own cost, a licence permitting use of the said Goods by the Customer;
 - (c) paying a sum to the Customer in compensation not exceeding the Price of the said infringing Goods; or
 - (d) if in FALKO's reasonable opinion none of the above options is commercially viable, require the Customer to cease use of the infringing Goods.
- 11.5 Clause 11.4 states the Customer's sole and exclusive remedy and FALKO's entire liability in respect of any infringement of any third party IPR by the Goods.
- 11.6 No liability will be incurred by FALKO in respect of infringements or alleged infringements arising out of:
- (a) a combination of the Goods with any other item or from their use for a purpose not agreed or accepted in writing by FALKO prior to such use;
 - (b) any modification of the Goods by anyone other than FALKO; or
 - (c) the use of the Goods otherwise than in accordance with the Contract.
- 11.7 FALKO's obligations in terms of Clause 11.4 are conditional upon the Customer promptly and fully notifying FALKO of any actual, threatened or suspected infringement of any of FALKO's IPR which comes to the Customer's notice, and of any claim by any third party so coming to the Customer's notice that the sale of the Goods infringes any rights of any other person. The Customer will, at the request and expense of FALKO, do all such things as may be reasonably required to assist FALKO in taking or resisting any proceedings in relation to any such infringement or claim.

12 **EXPORT LICENCES**

- 12.1 If Delivery is to take place in the United Kingdom, the Customer shall obtain any licence or consent for the export of the Goods from the United Kingdom. FALKO will, upon request and at the Customer's expense, endeavour to assist the Customer to obtain such licences or consents but FALKO will not be liable in the event of the non-issuance or renewal of any licences or consents.
- 12.2 If Delivery is to take place outside the United Kingdom:
- (a) the supply of any Goods for which a United Kingdom export licence or other consent is necessary will be conditional upon the granting of such licence or consent by the United Kingdom Government or other competent authority. FALKO will be responsible for obtaining such licence and/or consent but at the cost of and with the assistance of the Customer, and FALKO will not be liable in the event of the non-issuance or renewal of any licences or consents; and
 - (b) the Customer will be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any relevant duties.

13 **CONFIDENTIALITY**

- 13.1 Except as provided by Clause 13.2, Clause 13.3 and Clause 13.4, each party will at all times during the continuance of this Contract and after its termination:
- (a) keep all Confidential Information that they receive from the other party confidential and accordingly not disclose any of that Confidential Information to any other person; and
 - (b) not use any Confidential Information that they receive from the other party for any purpose other than in terms of this Contract.
- 13.2 Any Confidential Information may be disclosed by the Recipient to:
- (a) an Appropriate Authority;
 - (b) any of the Recipient's employees and contractors to such extent only as is necessary for the purposes contemplated by this Contract and subject in each case to the Recipient using its best endeavours to ensure that the person in question keeps the same confidential and does not use the same except for the purposes for which the disclosure is made.
- 13.3 Any Confidential Information may be used by the Recipient for any purpose, or disclosed by the Recipient to any other person, to the extent only that:
- (a) it is on the date of this Contract, or becomes, public knowledge through no fault of the Recipient (provided that in doing so the Recipient will not disclose any Confidential Information which is not public knowledge); or
 - (b) it can be shown by the Recipient, to the reasonable satisfaction of the other party, to have been known to the Recipient prior to its being disclosed by to it by the other party.
- 13.4 The Recipient may disclose the Confidential Information if and to the extent that it is required to do so by law or to the extent that it is ordered to do so by a court having valid jurisdiction to make such an order.
- 13.5 The party disclosing the Confidential Information may by notice demand its return and any copies made of it, or any part of it, by the Recipient or, at its option, demand the destruction and verification upon oath of the same following
- (a) fulfilment or accomplishment of the purposes contemplated by the Contract; or
 - (b) breach of any term of the Contract;
- whichever shall be the sooner. The Recipient's obligations of confidentiality shall survive termination of the Contract and/or return of the Confidential Information subject only to the provisions of Clause 13.3 above.
- 13.6 The Customer agrees that FALKO's Confidential Information is, by its nature, valuable proprietary commercial information, the misuse or unauthorised disclosure of which would be likely to cause FALKO considerable damage for which monetary damages would not provide adequate compensation. The Customer agrees that, in addition to other rights and remedies that may be available to FALKO, FALKO is entitled to relief by way of injunction (including interim injunctive relief) available from any court having valid jurisdiction over its terms.

14 **LIMITATIONS ON LIABILITY**

14.1 Subject to Clause 14.3, FALKO's liability under or in connection with the Contract or these Terms and Conditions, whether arising from contract, negligence or otherwise, shall be limited to 100% of the Price paid.

14.2 FALKO shall not be liable to the Customer for any of the following types of loss or damage even if, in each case, FALKO has been advised of the possibility of such loss or damage:

- (a) special, indirect or consequential loss (for the purpose of this Clause, indirect or consequential loss or damage means any loss not directly arising from the breach, gross negligence or other event concerned);
- (b) pure economic loss, costs, damages or charges;
- (c) loss of profits;
- (d) loss of revenue;
- (e) loss of contracts;
- (f) loss of anticipated savings;
- (g) loss of business;
- (h) loss of use;
- (i) loss of goodwill; and
- (j) loss or damage arising from loss, damage or corruption of any data,

in each case, whether direct, indirect or consequential or any claims for any consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

14.3 The exclusions and limitation of liability set out in Clause 14.2 do not apply to:

- (a) liability arising from death or injury to persons caused by negligence;
- (b) the Customer's obligation to pay the Price;
- (c) breach of terms regarding title implied by section 12 Sale of Goods Act 1979 and/or section 2 Supply of Goods and Services Act 1982;
- (d) either party's liability arising as a result of fraud or Malpractice; and
- (e) anything else which cannot be excluded or limited by Applicable Law,

to which no limit applies.

15 **DISPUTES AND TERMINATION**

15.1 If the Customer disputes an invoice it must notify FALKO within 15 days of receipt of the invoice. Failure to do so shall be considered as definitive acceptance of the invoice. The parties shall then negotiate in good faith for a period of 15 days to resolve the matter. If the parties fail to resolve the dispute then they may follow any other remedies available to them. In the event that only part of the invoice is disputed, the Customer shall pay that undisputed amount without any delay.

- 15.2 If the Customer cancels the Contract, FALKO reserves the right to charge all costs and expenses it has incurred in respect of the Goods (including any Delivery costs, if applicable) up to the point of cancellation, plus an additional 10% (ten per cent).
- 15.3 FALKO may terminate the Contract in respect of all or part of the Goods by giving the Customer at least two (2) days' notice at any time prior to the Delivery Date, in which event FALKO's sole liability will be to repay to the Customer any part of the Price which the Customer has paid to FALKO for the Goods in respect of which FALKO has exercised its right of termination.
- 15.4 The Contract may be terminated immediately by notice in writing:
- (a) by either party if the other party is in material or continuing breach of any of its obligations under these Terms and Conditions and fails to remedy the breach (if capable of remedy) for a period of ten working days after written notice by the other party;
 - (b) without limiting any other remedy, by giving the other party notice at any time if the other party is Insolvent. Each party will be bound to give to the other party immediate notice if this occurs.
- 15.5 FALKO may terminate the Contract in accordance with the provisions of Clause 16 (*Force majeure*).
- 15.6 For the purposes of Clause 15 (*Disputes and Termination*), a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).
- 15.7 In the event that the Contract is cancelled or terminated:
- (a) the Customer will take all steps necessary to mitigate the costs and liabilities incurred by the Customer in connection with such cancellation or termination; and
 - (b) the Customer will protect, preserve and deliver in accordance with FALKO's instructions any of FALKO's property related to the Contract, which is in the Customer's possession at the date of such cancellation or termination.
- 15.8 In addition to any right of lien to which FALKO may be entitled FALKO will in the event of the Customer's Insolvency or bankruptcy be entitled to a general lien on all items of the Customer's property or other property attributable to the Customer then in FALKO's possession (notwithstanding that such items or any of them may have been paid for). Such lien will subsist for the unpaid price of any Goods or other items sold and delivered to the Customer by FALKO or an Affiliate of FALKO under the Contract or any other contract.
- 15.9 Upon termination of the Contract for whatever reason, FALKO will be entitled to set off any claim it might have against the Customer against any sums otherwise due to the Customer by FALKO or any of its Affiliates in terms of this or any other contract.
- 15.10 Termination of the Contract will not affect the accrued rights of FALKO nor FALKO's other rights and remedies.

16 **FORCE MAJEURE**

- 16.1 FALKO will not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations, if the delay or failure is beyond FALKO's reasonable control and FALKO has given notice to the Customer accordingly. Without limiting these general words, the following events will be regarded as being beyond FALKO's reasonable control:
- (a) acts of God, explosion, flood, tempest, fire or accident;
 - (b) shortage or unavailability of supply, or any delays caused by the third party warehouse at which the Goods are stocked;
 - (c) strikes, lock-outs or other industrial actions or trade disputes (whether involving FALKO's employees or those of a third party);
 - (d) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - (e) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any applicable governmental, parliamentary or local authority; and
 - (f) import or export regulations or embargoes.

16.2 If an event should arise which is of a type to which Clause 10.716.1 applies, and it affects FALKO's performance of the Contract, the time for performance will be extended accordingly and FALKO will take reasonable steps to minimise the effect of any such delay. In the event that any failure to deliver or perform by FALKO pursuant to Clause 16.1 results in a delay of more than sixty (60) days, then FALKO will be entitled to terminate all or part of the Contract with immediate effect by written notice to the Customer without any liability for loss or damage caused by FALKO's failure to perform.

17 **GENERAL**

17.1 Entire Contract: Except as may otherwise be stipulated in writing, these Terms and Conditions and the Contract will constitute the entire agreement between FALKO and the Customer in respect of an order for any of the Goods and will supersede and exclude all prior representations, proposals or agreements whether oral or in writing. The parties agree that no representations, warranties, undertakings or promises have been expressly or impliedly given in respect of the subject matter of the Contract other than those which are expressly stated in the Contract.

17.2 Third Party Rights: Save as set out in Clause 8.8, the parties hereby agree that a person who is not a party to the Contract (save for any owners of the Goods on behalf of whom FALKO is selling such Goods) has no rights under the Contracts (Rights of Third Parties) Act 1999 (as amended, modified or supplemented from time to time) to enforce any term of the Contract.

17.3 Sub-Contract: FALKO may delegate the performance of any of its obligations or exercise of its rights hereunder to its duly appointed agents and in this event, FALKO will inform the Customer accordingly.

17.4 Variations: no variation of the Contract or these Terms and Conditions shall be effective unless it is in writing and signed by or on behalf of each party.

- 17.5 Assignment: The Customer shall not assign, transfer or novate or purport to assign or transfer or novate the Quotation or Contract to any other person without the prior consent of FALKO in writing.
- 17.6 Notices: A notice required or permitted to be given under this Contract:
- (a) by FALKO to the Customer must be in writing, marked for the attention of the Customer's representative and sent to the address, fax number or email address set out in the Quotation or to such other address, fax number, or email address as the Customer may notify to FALKO from time to time in accordance with this Contract; or
 - (b) by the Customer to FALKO must be in writing, marked for the attention of FALKO's representative and sent to the address, fax number or email address set out in the Quotation, or to such other address, fax number or email address as FALKO may notify to the Customer from time to time in accordance with this Contract, and copied to FALKO's legal department at its registered place of address (Fax: 01707 255555); (email: sarah.dichlian@falko.com);
 - (c) shall be deemed delivered:
 - (i) if the notice is by letter it shall be effective when sent via pre-paid first class post, two days after the date of posting;
 - (ii) if the notice is by fax it shall be effective when it is transmitted and the person sending the fax has phoned the person receiving it to confirm it was successful;
 - (iii) if sent by email, then when the receiving person has received it, and the sending party has phoned to confirm it was successful.
- 17.7 Waiver: No waiver by FALKO of any breach of the Contract by the Customer will be considered as a waiver of any subsequent breach of the same or any other provision.
- 17.8 Invalidity: If any Clause (or part of a Clause) of these Terms and Conditions or the Contract should be found not to be valid, lawful or enforceable by a court having proper authority or if the law changes so that it becomes invalid, unlawful or not enforceable to any extent then this Clause will apply. The Clause (or part affected) will be treated as having been deleted from the remaining terms of this Contract which will continue to be valid. In addition, the parties will use reasonable efforts to replace the deleted Clause (or part of it) with a valid replacement provision which is as close as possible to the one that has been deleted.
- 17.9 Law and Jurisdiction: The Contract and these Terms and Conditions, and any non-contractual obligations arising in connection with it are governed by and construed in accordance with English law.
- 17.10 The English courts have exclusive jurisdiction to determine any dispute arising in connection with the Contract and these Terms and Conditions, including disputes relating to any non-contractual obligations.
- 17.11 The Customer irrevocably waives any objection which it may now or later have to proceedings being brought in the English courts (on the grounds that the English courts are not a convenient forum or otherwise).

17.12 Nothing in the Contract or the Terms and Conditions (or, unless provided otherwise, any document entered into in connection with it) shall prevent FALKO from applying to the courts of any other country for injunctive or other interim relief.

These Terms and Conditions are valid as from the date first written above.