

**1. INTERPRETATION**

**1.1 In these conditions :**

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

**Conditions** *mean*; the terms and conditions set out in this document as amended from time to time in accordance with clause 19.4.

**Contract or Agreement** *means*; the agreement between the DePe and the Supplier for the purchase of the Goods and/or Services; and these conditions and the Purchase Order (including any attachments or schedules thereto) and all written Specifications referred to therein or otherwise supplied to the Supplier, and all terms and conditions implied by law, shall each be part of the Contract. Where the parties have entered into a specific formal written contract to be signed for on or behalf of both parties, the terms of that contract shall prevail in the event of, and to the extent of, any conflict with these conditions or the Purchase Order.

**DePe** *means*; DePe Gear Company Limited or any subsidiary or holding company or associate thereof (as such terms are defined in the Companies Act 2006 (as amended from time to time)).

**Delivery date** *means*: the date specified in the Order, or, if none is specified, within 2 day of the date of the Order.

**Delivery Location** *means*: the address for delivery of Goods and/or Services as set out in the Order.

**Goods** *means*; the goods (or any part of them) set out in the Order and/or Contract.

**Order** *means*; the DePe's order for the Goods and/or Services.

**Services** *means*; the services, and any part thereof to be performed as more particularly described in the Contract or the Order.

**Specification** *means*: the specifications, drawings and requirements (in each case, if any) referred to as described in the Order or elsewhere in the Contract.

**Supplier** *means*: the person or firm from whom the DePe purchases the Goods and/or Services.

**1.2 Interpretation:**

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

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- (b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (c) a reference to **writing** or **written** includes faxes and emails.

**2. BASIS OF CONTRACT**

- 2.1 The parties agree that these Conditions apply to the Contract to the exclusion of any other [standard] terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the DePe to purchase the Goods and/or Services in accordance with these Conditions.
- 2.3 The Order shall be deemed to be accepted on the earlier of:
  - (a) the Supplier issuing a written acceptance of the Order; and
  - (b) the Supplier doing any act consistent with fulfilling the Order,

at which point the Contract shall come into existence.

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

**3. THE GOODS AND/OR SERVICES**

- 3.1 The Supplier warrants and it is a condition of the Contract that the Goods and/or Services;
  - (a) Correspond with their description and any applicable Sample or Specification;
  - (b) are satisfactory quality (within the meaning of the Sale of Goods and/or Services Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by DePe expressly or by implication, and in this respect DePe relies on the Supplier's skill and judgement;
  - (c) will comply in all respects with the Order;
  - (d) (where they are manufactured products), will be free from defects in design, material and workmanship and remain so for 12 months after delivery; and
  - (e) are fit for the purpose of DePe and in this respect DePe is relying on the expertise of the Supplier

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- (f) comply with all applicable statutory and regulatory requirements relating to the manufacture, testing labelling, marking, packaging, packing, storage, handling, delivery, sale, purchase and use of the Goods and/or Services;
- (g) shall be manufactured and/or provided with skill and care.
- (h) shall be brand new and not reconditioned in any way or previously used, save where expressly agreed in writing by DePe.
- (i) are safe and without risk to health when in normal use and/or when in the use for which they were supplied,
- (j) when in use comply in all aspects with all relevant statutes, regulations, bye-laws and standards (including, if applicable, the CE Mark and Declaration of Conformity) in force at the date of delivery including, without prejudice to the generality of the foregoing and without limitation, the Factories Act 1961, the Safety, Health and Welfare at Work Act 1974.

3.2 The Supplier shall ensure that

- (a) at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- (b) Save where DePe has expressly agreed to Purchase the Intellectual Property from the Supplier or where such a purchase is reasonably to be implied by the parties conduct the Intellectual Property which the Supplier has supplied to DePe in accordance with this Contract which the Supplier has created and/or developed for the purpose of performing its obligations under this contract shall remain vested in the Supplier, and the Supplier hereby grants to DePe an irrevocable, unconditional, perpetual, royalty free, non-exclusive licence to copy, use, adapt and reproduce such Intellectual Property for any purposes whatsoever in connection with DePe's business and such licence shall carry with it the right to grant sub-licences and shall be transferable to third parties. The Supplier hereby indemnifies and agrees to keep indemnified DePe and its directors, officers, managers, employees and servants and agents from and against all loss, damages, claims, costs and expenses for which DePe is or becomes liable or which is incurred by DePe as a result of any infringement, or any alleged infringement of any third party's Intellectual Property rights in respect of the supply of the Goods and/or Services to DePe.

3.3 DePe may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

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3.4 If following such inspection or testing DePe considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, DePe shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 DePe may conduct further inspections and tests after the Supplier has carried out its remedial actions.

**4. DELIVERY**

4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods and/or Services are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (c) if the Supplier requires DePe to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

4.2 Unless otherwise agreed in writing between DePe and the Supplier, Goods shall be delivered Delivery Duty Paid ("DDP") having the meaning set out in the rules of the International Chamber of Commerce ("ICC") rules for the use of domestic and international trade terms 2010 (Incoterms 2010),

4.3 The Contract prices set out in the Order or otherwise referred to in the Contract are fully inclusive of all charges for carriage, freight, harbour duties, custom charges, import duties, packing, insurance or other charges whatsoever and no such charges shall be payable by DePe.

4.4 The Supplier shall deliver the Goods and/or Services:

- (a) on the Delivery Date;
- (b) at the Delivery Location; and
- (c) during DePe's normal business hours, or as instructed by DePe.

4.5 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.

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- 4.6 If the Supplier:
- (a) delivers less than the quantity of Goods ordered, DePe may reject the Goods; or
  - (b) delivers more than the quantity of Goods ordered, DePe may at its discretion reject the Goods or accept all the goods delivered,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and DePe accepts the delivery, no pro rata adjustment shall be made to the invoice for the Goods, and DePe shall receive good title in the surplus goods without additional charge.

- 4.7 The Supplier shall not deliver the Goods in instalments without DePe's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle DePe to the remedies set out in clause 5.

- 4.8 Time shall be of the essence for the delivery of Goods and /or Services.

- 4.9 Notwithstanding delivery, DePe shall not be deemed to have accepted any Goods and/or Services until they have been inspected and checked against the relevant Packing note (if any) and passed any acceptance or Specification tests which the DePe deems necessary.

**5. REMEDIES**

- 5.1 If the Goods and/or Services are not delivered on the Delivery Date, or do not comply with the undertakings set out in clause 3.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods and/or Services, DePe may exercise any one or more of the following remedies :
- (a) to terminate the Contract;
  - (b) to reject the Goods (in whole or in part) and return any Goods to the Supplier at the Supplier's own risk and expense;
  - (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods and/or Services if paid;
  - (d) to refuse to accept any subsequent delivery of the Goods and/or Services which the Supplier attempts to make;
  - (e) to recover from the Supplier any costs incurred by the DePe in obtaining substitute Goods and/or Services from a third party; and

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- (f) to claim damages for any other costs, loss or expenses incurred by the DePe which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

5.2 If the Goods and/or Services are not delivered on the Delivery Date the DePe may at its option claim or deduct 4% of the price of the Goods and/or Services for each week's delay in delivery by way of liquidated damages, up to a maximum of 60% of the total price of the Goods and/or Services . If DePe exercises a lawful right under this clause 5.2, it shall not be entitled to any of the remedies set out in clause 5.1 in respect of the Goods and/or Services ' late delivery (but such remedies shall be available in respect of the Goods and/or Services ' condition).

5.3 These Conditions shall apply to any repaired or replacement Goods and/or Services supplied by the Supplier.

5.4 DePe's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

**6. SERVICES NOTIFICATION AND SUSPENSION**

6.1 When such timing requirements are not specified in the Order or elsewhere in the Contract, DePe shall, when it requires the Services to be provided, send the Supplier notification of when it requires the services to be provided (the Services Notice) which can be sent in written form by post or by electronic communication or by telephone communication and the Supplier shall deliver those Services in accordance with the times specified in such Services Notice.

6.2 DePe may at any time and from time to time elect to postpone or suspend the carrying out of the Services or any part thereof by giving the Supplier written notice to that effect and immediately upon such notification of such election the Supplier shall assist DePe in bringing such postponement or suspension into effect. On any suspension by DePe, the Supplier will be entitled to a reasonable portion of the Price and costs properly incurred for the part of the Services properly completed before the Suspension. The Supplier will not be entitled to any other payment or damages for suspension.

**7. NOTICE TO CORRECT OR STEP IN**

7.1 If the Supplier fails to carry out any obligation under this Contract, the DePe may by notice require the Supplier to make good the failure and to remedy it within a specified reasonable lime.

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- 7.2 If the Supplier fails to remedy any breach or failure to perform within the remedy period set out in a notice to correct issued under this condition 7, then DePe may (without prejudice to any other right or remedy available to it) itself take such steps as necessary to remedy such failure or breach and/or engage others to take such steps.

The Supplier shall indemnify DePe for all reasonable and proper costs and expenses incurred by it in taking the steps or engaging others to take the steps referred to in Clause 7.2.

**8. TITLE AND RISK**

Title and risk in the Goods and/or Services shall pass to DePe on completion of delivery.

**9. PRICE AND PAYMENT**

- 9.1 The price of the Goods and/or Services shall be the price set out in the Order, or, if no price is quoted, the price agreed between the parties.
- 9.2 The price of the Goods and/or Services includes the costs of packaging, insurance and carriage of the Goods and/or Services .
- 9.3 No extra charges shall be effective unless agreed in writing with DePe.
- 9.4 The Supplier may invoice DePe for price of the Goods and/or at any time after the completion of delivery.
- 9.5 The Supplier shall ensure that the invoice includes
- a) The relevant Purchase Order number;
  - b) A unique Invoice number;
  - c) The VAT registration number of the payee;
  - d) DePe's name in full (both trade or business name and full legal name);
  - e) The address in full of the payee;
  - f) A contact phone number and email address of the payee;
  - g) Where registered for VAT, the payee must show the VAT due on the Invoice, the VAT rate and the VAT amount for the quantity of the Goods and/or Services supplied;
  - h) A description of the Goods and/or Services supplied;

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- i) The weight of the Goods and commodity code, and country of origin where applicable;

9.6 DePe shall pay correctly rendered invoices within 60 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.

9.7 DePe may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to DePe against any liability of DePe to the Supplier.

**10. DEPE MATERIALS**

The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by DePe to the Supplier (**DePe Materials**) and all rights in DePe material are and shall remain the exclusive property of DePe. The Supplier shall keep DePe Materials in safe custody at its own risk, maintain them in good condition until returned to DePe, and not dispose or use the same other than in accordance with DePe's written instructions or authorisation.

**11. CORRUPTION**

The Supplier shall not give, offer or agree to give, or offer, any employee, servant or agent of DePe, any gift or consideration of any kind (including, without limitation, any loan, fee, commission, reward, benefit or other payment) unless it is provided for in the Contract. For the avoidance of doubt, an invitation issued to DePe or one of DePe's People to participate in any professional development or business development event or reception shall not be deemed to constitute a gift for the purposes of this condition. Modest hospitality may be accepted at the discretion of DePe, but no travel or accommodation costs can be accepted.

**12. DOCUMENTS RELATING TO THE GOODS AND OR SERVICES**

The Supplier shall supply to DePe free of charge all technical drawings, service manuals, and maintenance specifications including, where required by DePe, certificate of conformance of Goods, certificate of analysis and material test certificates, written in the English language, with all relevant updating documents which relate to the Goods.

**13. INDEMNITY**

13.1 The Supplier shall keep DePe indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential



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losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by DePe as a result of or in connection with:

- (a) any claim made against DePe for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods and/or Services , to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) any claim made against DePe by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods and/or Services , to the extent that the defects in the Goods and/or Services are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against DePe by a third party arising out of or in connection with the supply of the Goods and/or Services , to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

13.2 This clause 13 shall survive termination of the Contract.

**14. INSURANCE**

During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on DePe's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

**15. CONFIDENTIALITY**

15.1 The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by DePe, its employees, agents or subcontractors, and any other confidential information concerning DePe's business, its products and services which the Supplier party may obtain. The Supplier shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Supplier may also disclose such of the disclosing

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party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

15.2 This clause 15 shall survive termination of the Contract.

**16. COMPLIANCE WITH RELEVANT LAWS AND POLICIES**

16.1 In performing its obligations under the Contract, the Supplier shall comply with all applicable laws, statutes, regulations and codes from time to time in force.

16.2 DePe may immediately terminate the Contract for any breach of clause 16.

**17. TERMINATION**

17.1 DePe may terminate the Contract in whole or in part at any time before delivery of the Goods or at any time before or during the provision of Services with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. DePe shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods and/or Services at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

17.2 Without limiting its other rights or remedies, DePe may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 1 day of that party being notified in writing to do so;
- (b) the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business [or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction];
- (c) the Supplier takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his assets, or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (d) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

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- (e) the Supplier's financial position deteriorates to such an extent that in DePe's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

17.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

17.4 Clauses that expressly or by implication survive termination of the Contract shall continue in full force and effect.

**18. FORCE MAJEURE**

DePe shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from an event, circumstance or cause beyond its reasonable control.

**19. GENERAL**

**19.1 Assignment and other dealings**

- (a) DePe may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.
- (b) The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of DePe.

19.2 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of DePe. If DePe consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

19.3 **Entire agreement.** This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

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

19.5 **Waiver.** Except as set out in clause 2.4, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent

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breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.

19.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

19.7 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 19.7(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

19.8 **Third party rights.** No one other than a party to this agreement and their permitted assignees shall have any right to enforce any of its terms.

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

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