

Terms of Sale and Services.

Metier SCM Limited, Hong Kong

REV 4.1 · EFFECTIVE 1 AUGUST 2026
SUPERSEDES ALL EARLIER REVISIONS

Clauses 1 to 12 apply to every Order. The Order Acknowledgment identifies the Transaction Model and the Schedule or Schedules that apply: A Resale, B Procurement Services, C Design and Build, D Custody. More than one Schedule may apply to an Order. A Schedule prevails over clauses 1 to 12 to the extent of any conflict, and where two Schedules conflict the Order Acknowledgment governs. Each Schedule is issued as a separate document under the same revision.

1. Application, models and formation

- 1.1** These Conditions apply to every quotation, Order Acknowledgment and supply by Metier SCM Limited (the "Seller") to the buyer identified in the Order Acknowledgment (the "Buyer"), to the exclusion of all other terms. "Business Day" means a day other than a Saturday, Sunday or public holiday in Hong Kong. "Goods" includes goods and, where the context requires, services supplied under an Order.
- 1.2** Any term contained in the Buyer's purchase order or other document which adds to, differs from or conflicts with these Conditions is expressly rejected and shall not apply, whether or not such document is acknowledged by the Seller. No acquiescence by the Seller shall constitute acceptance of any such term.
- 1.3** A quotation is an invitation to treat. The Seller's order acknowledgment (the "Order Acknowledgment") is an offer to contract upon these Conditions. A contract is formed when the Buyer accepts that offer in writing, pays a deposit or other sum against it, instructs the Seller to proceed, or otherwise acts upon it. The Seller may withdraw an Order Acknowledgment at any time before it is so accepted.
- 1.4** The Order Acknowledgment is the definitive record of the Transaction Model, the applicable Schedules, the scope, the price and the terms of the Order, and prevails over any inconsistent document of the Buyer. The applicable Schedules are provided with the quotation and the Order Acknowledgment and form part of the contract.
- 1.5** The Seller contracts under one or more of four Transaction Models, identified in the Order Acknowledgment:
- (a) "Resale": the Seller purchases Goods in its own name and sells them to the Buyer as principal, whether shipped from the supplier, from the Seller's premises, or direct to a destination nominated by the Buyer. Schedule A applies.
 - (b) "Procurement Services": the Seller identifies, qualifies or introduces suppliers or contract manufacturers for a fee and the Buyer contracts with the supplier directly. The Seller does not take title and does not supply the Goods. Schedule B applies.
 - (c) "Design and Build": the Seller supplies Goods which it or a contract manufacturer designs or manufactures to the Buyer's requirement. Such Goods are Custom Goods unless the Order Acknowledgment states otherwise. Schedule C applies.
 - (d) "Custody": the Seller receives, consolidates, stores or despatches goods owned by the Buyer or purchased by the Buyer from a third party. Schedule D applies and title does not pass to the Seller.
- 1.6** Save where the Order Acknowledgment identifies Procurement Services, the Seller acts as an independent principal and not as agent, trustee or fiduciary of the Buyer.
- 1.7** Where these Conditions conflict with a framework or supply agreement executed by both parties, that agreement prevails. These Conditions apply to business customers only and the Seller does not contract with consumers. Where the Seller despatches Goods to the Buyer's customers at the Buyer's direction, it does so for the Buyer's account and no contractual relationship arises between the Seller and any such customer.

2. Prices, fees and currency

- 2.1** The Seller prices on an open-book basis. Where the Seller purchases Goods from a supplier, the Seller shall disclose the supplier invoice. In every Transaction Model the Seller shall disclose third-party costs which it incurs and passes through, and the Seller's fee, each as a discrete line item.

- 2.2** The Seller shall not receive any commission, rebate, discount or other benefit from any supplier in respect of the Buyer's Orders. Third-party costs are passed through at cost, save for charges expressly stated in these Conditions or the Order Acknowledgment to carry a handling or administration element.
- 2.3** The Seller's fee is agreed before placement of the supplier order or commencement of services and is not varied in respect of that Order.
- 2.4** Prices exclude duties, taxes and any charge levied upon importation, and clause 4 applies.
- 2.5** Where a supplier or third-party cost varies after formation for reasons beyond the Seller's control, the Seller shall notify the Buyer promptly and evidence the variation. The Buyer may proceed at the revised cost or cancel the affected item, subject to reimbursement of costs irrevocably committed and, where Schedule C applies, to clause C7.
- 2.6** Quantities delivered may vary from quantities ordered by up to five per cent (5%) where the supplier's process so requires, and the Seller invoices the quantity delivered.
- 2.7** The Seller invoices in the currency stated in the Order Acknowledgment. Where the Seller settles a supplier in a different currency, conversion is at the rate actually obtained by the Seller and no margin is applied upon conversion. The Seller shall disclose the rate applied upon request.

3. Payment

- 3.1** Payment terms are as stated in the Order Acknowledgment. Absent such statement, a deposit is payable before placement of the supplier order and the balance before release of the Goods for shipment.
- 3.2** The Buyer shall pay in full without set-off, deduction or counterclaim. Where any deduction or withholding is required by law, the Buyer shall gross up such payment so that the Seller receives the sum it would have received absent such deduction or withholding.
- 3.3** Interest accrues upon overdue sums at one and one-half per cent (1.5%) per month, accruing daily from the due date until payment.
- 3.4** Where any sum is overdue, the Seller may suspend performance of all Orders, withhold release of Goods, and declare all sums owing immediately due and payable.
- 3.5** Time for payment is of the essence.

4. Duties, taxes and customs

- 4.1** Save where the Order Acknowledgment names the Seller as importer of record, the Buyer is the importer of record in the destination market and is responsible for the customs declaration, for classification, valuation, origin and marking, for all duties and taxes, and for maintaining such records as applicable law requires.
- 4.2** Duties and taxes are assessed at the rates in force on the date of entry and not on the date of the Order or of the quotation. Any landed-cost figure provided by the Seller is an estimate as at the date given and is not a fixed price.
- 4.3** Where the Seller acts as importer of record or quotes upon a delivered-duty-paid basis, the price is adjustable to reflect any variation in duty rate, trade remedy, surcharge or other import charge taking effect between formation and the date of entry. The Seller shall evidence such variation. The Buyer may proceed at the adjusted price or cancel the affected Goods before shipment, subject to reimbursement of costs irrevocably committed and, where Schedule C applies, to clause C7. This clause modifies and prevails over the allocation of import costs otherwise arising under any Incoterms 2020 rule agreed between the parties.

- 4.4** The Seller shall declare true values, true origin and accurate descriptions of Goods to every customs authority, and shall not undervalue, misdescribe or declare an origin which the Goods do not possess. The Seller shall decline any instruction to do so.
- 4.5** Where preferential duty treatment is available, the Seller shall use commercially reasonable endeavours to procure the origin certification or other documentary evidence required, and shall make its provision a condition of the supplier purchase order. The Seller is not liable for duty payable where such evidence is refused, rejected or unavailable for reasons beyond its control.

5. Product responsibility and compliance

- 5.1** The Seller is responsible for the Order, being that the Goods conform to the agreed specification, in the agreed quantity, and are shipped as agreed.
- 5.2** As between the Buyer and the Seller, the Buyer is responsible for the product in its market, including determining whether it may lawfully be sold there, and for registration, certification, testing, labelling, instructions, warnings and the appointment of any local representative required by applicable law. Nothing in this clause relieves the Seller of any obligation imposed upon it directly by applicable law.
- 5.3** As between the Buyer and the Seller, the Buyer shall indemnify the Seller to the extent that any claim arises from the Buyer's functional specification, design instruction, nominated component or supplier, or a decision recorded in the Customer Decision Log under clause C2.4, excluding any part of such claim arising from the Seller's deviation from the approved design, negligence, wilful misconduct or breach of law. As between the parties, the Buyer is responsible for product liability to third parties in the destination market to the same extent.
- 5.4** An indemnified party shall notify the indemnifying party promptly of any claim, shall not admit liability or settle without consent not to be unreasonably withheld, and shall afford reasonable cooperation. The indemnifying party may assume conduct of the defence at its cost. Each party shall take reasonable steps to mitigate its loss.
- 5.5** In respect of Goods which support or transfer a person's body weight, are used in personal or medical care, or are relied upon to prevent injury, the Seller may require, before placement of the supplier order, current certification to the recognised standard for that product, the supporting test reports, evidence that the manufacturer maintains product liability insurance, and evidence that the Buyer maintains product liability insurance naming the Seller as additional insured. The Seller may decline any product or category at its discretion, and the Buyer shall not require the Seller to act as importer of record in respect of such Goods.
- 5.6** Each party shall comply with applicable sanctions, export control and anti-corruption laws. The Buyer represents that it is not, and is not owned or controlled by, a sanctioned party, and that the Goods will not be re-exported in breach of such laws. Neither party shall require or provide any arrangement intended to disguise the origin of Goods, understate their value, or evade any duty, trade remedy or import prohibition.
- 5.7** The Seller shall use commercially reasonable endeavours, and shall exercise such rights as it holds under its supplier purchase orders, to obtain supply chain tracing documentation reasonably required by applicable law or expressly specified in the Order Acknowledgment, and shall provide to the Buyer such documentation as it holds. Where Goods are detained by an authority upon forced labour or origin grounds, detention costs are for the Buyer's account save where the detention arises from the Seller's failure to obtain documentation it expressly agreed to obtain.

6. Confidentiality and records

- 6.1** "Confidential Information" means information disclosed by one party to the other in connection with an Order which is identified as confidential or which a reasonable person would understand to be confidential, including specifications, drawings, pricing, supplier and customer identities, methods and business plans.
- 6.2** Each party shall keep the other's Confidential Information confidential, use it solely to perform the Order, and protect it with no less care than it applies to its own. This obligation continues for five (5) years after completion of the Order, and indefinitely in respect of information which constitutes a trade secret for so long as it remains one.

- 6.3** Confidential Information does not include information which is or becomes public other than by breach, was lawfully known without restriction, is independently developed, or is lawfully received from a third party. A party may disclose Confidential Information to its employees, affiliates, professional advisers, insurers and subcontractors on a need-to-know basis under equivalent obligations, and where required by law, regulation, a court or an arbitral tribunal, giving such prior notice as is lawful and practicable. Each party may retain archival copies required for legal, tax, insurance or quality purposes, which remain subject to this clause.

- 6.4** The Seller may disclose the Buyer's identity, destination and product information to suppliers, freight forwarders, customs brokers, insurers and authorities to the extent necessary to perform the Order. Save as so required, the Seller shall not disclose the Buyer's customer list or pricing to any supplier, nor a supplier's identity or price to the Buyer's customers. Where the Buyer's quality system or regulator requires knowledge of the manufacturer, the Seller shall disclose it to the Buyer.
- 6.5** "Buyer Records" means the Buyer's order history, product specifications, inspection reports, quality records and compliance documentation relating to the Buyer's Orders. Buyer Records are the property of the Buyer and upon written request the Seller shall furnish them in a usable electronic format within fifteen (15) days, whether or not the relationship subsists. Buyer Records exclude the Seller's proprietary templates, methodologies and internal analysis, third-party confidential material, and records the Seller is restricted by law from disclosing.
- 6.6** Neither party is subject to any exclusivity, minimum volume, notice penalty or exit fee save as provided by an agreement executed by both parties. Where the Seller processes personal data upon the Buyer's behalf it shall do so solely upon the Buyer's instructions and pursuant to a separate written data processing agreement.

7. Intellectual property and tooling

- 7.1** "Background IP" means intellectual property owned or developed by a party before an Order or independently of it, including in the Seller's case its platform architecture, control systems, software libraries, engineering methods, calculations and process knowledge. Background IP remains vested in the party owning it and no Order transfers it, irrespective of which party funds the Order.
- 7.2** Any improvement, modification, derivative work, extension or new module of a party's Background IP created in the performance of an Order remains that party's Background IP. Where such a development is created by the Seller and the Buyer has paid the Seller's charges for it, the Buyer receives the licence in clause 7.4 in respect of it.
- 7.3** "Foreground IP" means intellectual property created specifically in the performance of an Order which is not Background IP and not within clause 7.2. Where the Buyer has paid the Seller's charges for the design, engineering or tooling giving rise to Foreground IP, that Foreground IP vests in the Buyer upon payment in full. Otherwise it vests in the Seller.
- 7.4** Where Foreground IP vests in the Buyer, the Buyer grants the Seller a non-exclusive, royalty-free licence to use it so far as necessary to perform the Order and support the Goods. Where Foreground IP or a development within clause 7.2 vests in the Seller, the Seller grants the Buyer a perpetual, non-exclusive, royalty-free licence to use, operate, maintain, repair and procure spare parts for the Goods supplied.
- 7.5** Intellectual property in the Buyer's functional specification, drawings and materials remains vested in the Buyer. The Buyer shall not reverse engineer, copy or disclose the Seller's Background IP, nor permit any third party to do so, save that the Buyer may disclose so much of it as is necessary to a contractor engaged to exercise the licence in clause 7.4, under written confidentiality obligations no less protective than clause 6.
- 7.6** Tooling, moulds, jigs and fixtures paid for by the Buyer are the property of the Buyer. The Seller shall identify them as such, shall require its supplier purchase orders to recognise the Buyer's ownership and to provide for segregation, no unauthorised use and release on request, and shall upon request and upon payment of all sums owing use commercially reasonable endeavours to procure their release or transfer, subject to any lien lawfully held by a supplier. Tooling paid for by the Seller remains the Seller's property.

8. Limitation of liability

- 8.1** Nothing in these Conditions limits liability for death or personal injury caused by negligence, for fraud, for breach of the implied terms as to title under the Sale of Goods Ordinance (Cap. 26), or for any liability which cannot lawfully be limited. Every other limitation and exclusion applies only to the extent permitted by law and is intended to be fair and reasonable in the circumstances known to the parties at formation.
- 8.2** Subject to clause 8.1, the Seller's aggregate liability under an Order in the Resale or Design and Build model shall not exceed the total amount paid or payable by the Buyer in respect of the Goods giving rise to the claim.
- 8.3** Subject to clause 8.1, the Seller's aggregate liability under an Order in the Procurement Services model, and in respect of any advisory, sourcing, inspection or documentation service however provided, shall not exceed the greater of the fees paid or payable in respect of that Order and the fees paid or payable to the Seller in the twelve (12) months preceding the claim.
- 8.4** Subject to clause 8.1, the Seller's aggregate liability in respect of goods held under Schedule D shall not exceed the value declared by the Buyer and accepted by the Seller in writing or, absent such acceptance, the lesser of the Buyer's documented cost of the goods and twenty-five thousand US dollars (US\$25,000) per consignment, and in any event shall not exceed two hundred and fifty thousand US dollars (US\$250,000) in aggregate in any twelve-month period, unless the Seller expressly agrees otherwise in its written acceptance of a declared value.
- 8.5** Subject to clause 8.1, the Seller is not liable for loss of profit, loss of revenue, loss of contract, loss of anticipated savings, loss of goodwill, business interruption, recall costs, or any indirect or consequential loss howsoever arising.
- 8.6** Any claim shall be brought within twelve (12) months of the date upon which the Buyer became aware, or ought reasonably to have become aware, of the circumstances giving rise to it. The running of that period is suspended while the parties are engaged in the process under clause 11.2, and nothing in clause 11.2 prevents a party from commencing arbitration solely to preserve a limitation period.

9. Force majeure

- 9.1** Neither party is liable for any failure or delay caused by an event beyond its reasonable control, including natural events, war, civil disturbance, epidemic, industrial action, failure of transport or utilities, port closure, and any embargo, prohibition, illegality or act of government which prevents performance.
- 9.2** An increase in the cost of performance arising from the imposition or variation of a tariff, duty or import charge is governed by clause 4.3 and does not of itself constitute an event within clause 9.1.
- 9.3** The affected party shall notify the other promptly. Where such event continues for more than ninety (90) days, either party may cancel the affected Order and the Buyer shall pay for work performed and costs committed to that date, subject where Schedule C applies to clause C7.

10. Cancellation and termination

- 10.1** The Buyer may cancel an Order before the Seller places it with a supplier or commences services, subject to reimbursement of costs irrevocably committed and payment of fees accrued for services performed to the date of cancellation.
- 10.2** After placement or commencement, the Buyer may cancel only with the Seller's written consent, and shall pay costs incurred, costs irrevocably committed, any supplier cancellation charge, and the Seller's fee upon the cancelled portion, less any cost genuinely avoided by the Seller. Deposits held are applied against such sums. Clause C7 applies in place of this clause in respect of Custom Goods.
- 10.3** The Seller may terminate or suspend any Order where the Buyer is overdue upon payment, becomes insolvent or takes any step towards insolvency, or where performance would breach clause 5.6.

- 10.4** Upon termination under clause 10.3, or upon any cancellation, the parties shall settle as follows: the Buyer shall pay for Goods delivered, work performed and costs irrevocably committed, together with any sum payable under clause 10.2 or C7; deposits and milestone payments held are applied against those sums and any balance is refunded or paid as the case requires; Goods and work in progress paid for in full are made available to the Buyer; the Buyer's tooling is released in accordance with clause 7.6; and each party returns or destroys the other's Confidential Information, subject to clause 6.3.

11. Governing law and dispute resolution

- 11.1** These Conditions and every Order are governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region.
- 11.2** Before commencing arbitration, each party shall nominate a senior representative and the parties shall endeavour in good faith to resolve the dispute within thirty (30) days of written notice describing it. This clause does not preclude either party from seeking urgent interim relief.
- 11.3** Any dispute arising out of or in connection with these Conditions or any Order, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre under the HKIAC Administered Arbitration Rules in force at the date of submission of the Notice of Arbitration. The seat is Hong Kong, the tribunal shall consist of one arbitrator, and the language shall be English.
- 11.4** Where the aggregate amount in dispute is less than US\$50,000, the parties agree to request the application of the Expedited Procedure under those Rules and that the dispute be determined upon documents only, save where the tribunal determines that a hearing is necessary.
- 11.5** Clause 11.3 does not preclude either party from applying to any court for interim or protective relief, nor preclude the Seller from bringing proceedings in any court of competent jurisdiction to recover an undisputed debt or to enforce its title to or security interest in Goods under Schedule A or Schedule C.

12. General

- 12.1** The United Nations Convention on Contracts for the International Sale of Goods does not apply. The Seller's directors, employees, affiliates, agents and subcontractors may enforce clauses 5, 6, 7 and 8 under the Contracts (Rights of Third Parties) Ordinance (Cap. 623). Save as so provided, a person who is not a party to an Order has no right under that Ordinance to enforce any of its terms. The parties may vary or rescind an Order without the consent of any person entitled to enforce a term under this clause.
- 12.2** These Conditions together with the Order Acknowledgment and the applicable Schedules constitute the entire agreement between the parties in respect of their subject matter. Each party acknowledges that it has not relied upon any statement not set out in them, save that nothing in this clause excludes or restricts liability for fraudulent misrepresentation or any liability which cannot lawfully be excluded. Where any provision is held unenforceable the remainder continues in force and that provision is modified to the minimum extent necessary to render it enforceable. No delay or failure to enforce any provision constitutes a waiver of it.
- 12.3** The Seller may assign or subcontract any Order, save that the Seller shall not change a manufacturer, manufacturing site, material or critical process expressly approved in the Order Acknowledgment without the Buyer's prior written consent. The Buyer shall not assign without the Seller's written consent, such consent not to be unreasonably withheld.
- 12.4** Notices shall be in writing and take effect upon delivery to the address or email address stated in the Order Acknowledgment. The Seller may revise these Conditions, and the revision applicable to an Order is that identified in the quotation or Order Acknowledgment for that Order.

Schedule A — Resale.

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Applies where the Order Acknowledgment identifies the Resale model. To be read with the Terms of Sale and Services (clauses 1–12), Rev 4.1, which apply to every Order.

A1. Delivery, title and risk

- A1.1** The delivery term is as stated in the Order Acknowledgment and is construed in accordance with Incoterms 2020, subject to clause 4.3. Risk passes as provided by that term.
- A1.2** Delivery dates are estimates given in good faith and the Seller is not liable for delay. Where delivery has not occurred within ninety (90) days after the acknowledged delivery date, for reasons other than an act or omission of the Buyer or an event within clause 9, the Buyer may cancel the undelivered portion by written notice and the Seller shall refund sums paid in respect of that portion.
- A1.3** Title remains vested in the Seller until the Seller has received payment in full of all sums owing by the Buyer upon any account. Until then the Buyer holds the Goods as bailee, keeps them separately identifiable and insured, and shall upon written demand deliver them up or afford the Seller access to collect them. This clause applies to the extent permitted by the law of the place in which the Goods are situated.
- A1.4** To the extent that clause A1.3 operates as, or is recharacterised by applicable law as, the creation of a security interest, the Buyer grants the Seller a security interest in the Goods and their identifiable proceeds to secure all sums owing. The Buyer authorises the Seller to make such filings and registrations as are necessary to perfect that interest in any jurisdiction, and shall execute such documents and provide such information as the Seller reasonably requires for that purpose.
- A1.5** The Seller may deliver by instalments and invoice each separately. A defect in any one instalment does not entitle the Buyer to reject any other.

A2. Inspection, defects and claims

- A2.1** Where inspection forms part of an Order, the Seller shall inspect against the written specification and acceptance levels stated in the Order Acknowledgment or, absent those, against the sample approved by the Buyer.
- A2.2** Where a lot fails inspection, the Seller shall exercise such rights as it holds under its supplier purchase order to require rework, sorting or replacement, or shall agree an alternative remedy with the Buyer.
- A2.3** The Buyer shall inspect the Goods upon delivery. Claims for shortage, damage in transit or defects apparent upon inspection shall be notified in writing within thirty (30) days of delivery with reasonable supporting evidence, and the affected units retained. Claims for defects not reasonably apparent shall be notified within six (6) months of delivery. Notification does not vary the allocation of risk under clause A1.1.
- A2.4** Where a valid claim is made, the Seller shall at its option replace or repair the Goods or credit the price paid, and this is the Buyer's sole remedy in respect of the Goods.
- A2.5** To the fullest extent permitted by law, and subject to clause 8.1, the conditions and warranties implied by the Sale of Goods Ordinance (Cap. 26) other than as to title are excluded, save that the Seller warrants that Goods conform to the agreed specification at the point at which risk passes. Where a manufacturer's warranty subsists the Seller shall assign it to the Buyer to the extent assignable and, where not assignable, provide reasonable assistance in pursuing it at the Buyer's reasonable cost unless the defect is attributable to the Seller.
- A2.6** Goods shall not be returned without the Seller's written authorisation.

Schedule B — Procurement Services.

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B1. Scope and status

- B1.1** Under this Schedule the Seller provides supplier identification, qualification, audit, negotiation support, inspection or related services for a fee. The Buyer contracts with the supplier directly.
- B1.2** The Seller does not purchase, take title to, or supply the Goods, and gives no warranty in respect of Goods supplied by the third-party supplier. The Seller is not a party to the contract between the Buyer and the supplier and has no liability under it. Under this Schedule the Seller acts as an independent contractor and not as agent, trustee or fiduciary of the Buyer, save to the extent that the Order Acknowledgment expressly authorises the Seller to undertake a specified act as the Buyer's agent.
- B1.3** The Seller performs the services with reasonable skill and care. Findings, reports and recommendations are based on information available at the time and on such inspection as the Order Acknowledgment provides, and are not a guarantee of a supplier's performance, solvency or continued capability.

- B1.4** The Buyer remains responsible for its decision to engage any supplier, for the terms it agrees with that supplier, and for the matters in clause 5.2.

B2. Fees and cancellation

- B2.1** Fees are as stated in the Order Acknowledgment and are payable whether or not the Buyer proceeds to contract with any supplier identified.
- B2.2** The Buyer may cancel at any time and shall pay fees accrued for services performed to the date of cancellation together with costs irrevocably committed.
- B2.3** The Seller's liability under this Schedule is limited as provided by clause 8.3.

Schedule C — Design and Build.

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Applies where the Order Acknowledgment identifies the Design and Build model. To be read with the Terms of Sale and Services (clauses 1–12), Rev 4.1, which apply to every Order.

C1. Scope and design tiers

- C1.1** "Custom Goods" means Goods designed, engineered, configured or built to the Buyer's requirement under this Schedule. All Design and Build Orders are Custom Goods unless the Order Acknowledgment states otherwise.
- C1.2** The Order Acknowledgment identifies the Design Tier:
- (i) "Build to Print": the Buyer supplies the design. The Seller warrants conformity with that design and workmanship only and gives no warranty as to the adequacy or fitness of the design itself.
 - (ii) "Contract Manufacturer Design": a contract manufacturer designs to the Buyer's functional specification. The Seller passes through such design warranty and indemnity as it obtains from that manufacturer and is not liable for the design beyond the benefit so passed through.
 - (iii) "Seller Design": the Seller designs to the Buyer's functional specification. Clauses C2 and C4 apply in full.

C2. Specification, approval and records

- C2.1** The Buyer shall provide a functional specification stating the performance, interfaces, environment, applicable standards and any constraint the Goods must satisfy. The Seller may rely upon it and is not obliged to verify it.
- C2.2** The Seller shall issue a design specification for the Buyer's written approval. Approval is a condition of proceeding and the Seller shall not commence manufacture without it. The Order Acknowledgment or design specification shall record the boundary between the Buyer's functional requirements and the Seller's design decisions.
- C2.3** Where the Goods present a risk of injury, the Seller shall issue a risk assessment against the standard identified in the Order Acknowledgment, listing hazards, controls applied and residual risks. The Buyer shall approve the residual risk register separately from the design specification. Approval of the design specification alone does not constitute acceptance of residual risk.
- C2.4** The Seller shall maintain a Customer Decision Log recording each component, material, supplier, interface, tolerance or protective measure specified, nominated, varied or declined by the Buyer, with the date and reason given. Entries acknowledged by the Buyer are conclusive evidence for the purposes of clause 5.3.
- C2.5** No variation to the functional specification, the design specification or the schedule takes effect except by written change order stating the change and its price and schedule impact, signed by both parties. The Seller is not obliged to commence work on a requested change before a change order is signed, and any delay pending signature is Buyer Delay.

C3. Delivery, title and risk

- C3.1** The delivery term is as stated in the Order Acknowledgment and is construed in accordance with Incoterms 2020, subject to clause 4.3. Risk passes as provided by that term or, where clause C6.3 applies, upon deemed delivery under that clause.

- C3.2** Title remains vested in the Seller until the Seller has received payment in full of all sums owing by the Buyer upon any account. Until then the Buyer holds the Goods as bailee, keeps them separately identifiable and insured, and shall upon written demand deliver them up or afford the Seller access to collect them. This clause applies to the extent permitted by the law of the place in which the Goods are situated.

- C3.3** To the extent that clause C3.2 operates as, or is recharacterised by applicable law as, the creation of a security interest, the Buyer grants the Seller a security interest in the Goods and their identifiable proceeds to secure all sums owing. The Buyer authorises the Seller to make such filings and registrations as are necessary to perfect that interest in any jurisdiction, and shall execute such documents and provide such information as the Seller reasonably requires for that purpose.

- C3.4** Where an Order comprises more than one item of equipment, the Seller may deliver by instalments and invoice each separately. A defect in any one instalment does not entitle the Buyer to reject any other.

C4. Warranty and claims

- C4.1** The Seller warrants that Custom Goods are free from defects in materials and workmanship and conform to the approved design specification for the warranty period stated in the Order Acknowledgment. Absent such statement the period is twelve (12) months from commissioning or eighteen (18) months from delivery or deemed delivery, whichever expires first. The Seller shall at its option repair or replace Goods failing to meet this warranty, and this is the Buyer's sole remedy, subject to clause 8.
- C4.2** Under Build to Print and Contract Manufacturer Design, the Seller's warranty does not exceed in scope or duration the warranty obtained by the Seller from the manufacturer, and the Seller shall disclose that warranty to the Buyer before the Order Acknowledgment is issued. Under Seller Design, clause C4.1 applies irrespective of the manufacturer's terms. Components manufactured by third parties carry their manufacturer's warranty, which the Seller shall assign to the Buyer to the extent assignable and, where not assignable, shall pursue on the Buyer's behalf at the Buyer's reasonable cost unless the defect is attributable to the Seller.
- C4.3** Warranties given by component manufacturers run from those manufacturers' own dates and are not extended by the Seller. Where Buyer Delay defers commissioning, the period under clause C4.1 runs from the date upon which commissioning would have occurred but for that delay. Where Buyer Delay causes a component warranty to expire or be materially reduced before commissioning, the Seller shall notify the Buyer, who shall elect either to accept the reduced coverage or to have the affected components replaced or re-warranted at the Buyer's cost.
- C4.4** The warranty does not extend to fair wear and tear, consumable parts, damage from misuse, incorrect installation or operation outside the specification, unauthorised modification or repair, or failure to observe the Seller's maintenance instructions, and is suspended for any period during which any sum owing to the Seller is overdue.

C4.5 To the fullest extent permitted by law, and subject to clause 8.1, the conditions and warranties implied by the Sale of Goods Ordinance (Cap. 26) other than as to title are excluded, the warranty in clause C4.1 applying in their place. A warranty claim shall be notified in writing within thirty (30) days of the Buyer becoming aware of the defect and in any event before the warranty period expires, with reasonable supporting evidence, and the Goods shall be made available for inspection.

C5. Delay

C5.1 "Buyer Delay" means any delay caused by the act or omission of the Buyer, including late provision of the functional specification, approvals under clause C2, drawings, free-issue items, access, change order signature or payment. The delivery schedule extends day for day and the Buyer shall reimburse costs incurred in consequence, including idle engineering time, storage, preservation and re-qualification of stored components, re-mobilisation and supplier standby charges.

C5.2 Where Buyer Delay reaches thirty (30) cumulative days the Seller may re-price the remaining work to reflect its then-current costs. Where it reaches sixty (60) cumulative days the Seller may either invoice all work performed and costs committed to that date or treat the Order as cancelled by the Buyer, whereupon clause C7 applies.

C5.3 "Excusable Delay" means delay arising from an event within clause 9 or from Buyer Delay. Where readiness for factory acceptance testing is delayed beyond thirty (30) days after the acknowledged date for reasons which are not Excusable Delay, the Seller shall at its cost take reasonable measures to recover the schedule, including expedited procurement, overtime and upgraded freight, and shall waive any expedite charge on the affected Order.

C5.4 Where the Seller has not notified readiness within one hundred and eighty (180) days after the acknowledged date and the delay is not Excusable Delay, the Buyer may cancel the undelivered portion by written notice. The Seller shall refund sums paid less costs incurred and irrevocably committed to that date, and shall on request transfer to the Buyer the work in progress, drawings and Foreground IP for which the Buyer has paid.

C6. Readiness, testing and acceptance

C6.1 The Seller shall notify the Buyer when the Goods are ready for factory acceptance testing, attaching the test protocol. The Buyer shall attend or appoint a representative within ten (10) Business Days of that notice.

C6.2 Where the Buyer does not attend or expressly waives attendance, the test is deemed passed, the Goods deemed accepted as conforming to the approved design specification, and the Buyer is deemed to have waived any claim in respect of matters which the test would reasonably have identified.

C6.3 Where the Goods are ready and the Buyer fails to take delivery within ten (10) Business Days of the Seller's notice, delivery is deemed to have occurred, risk passes to the Buyer, the full balance becomes immediately due and payable, and storage accrues from that date at the rate stated in the Order Acknowledgment or, absent a stated rate, at the Seller's actual third-party cost plus a handling charge of fifteen per cent (15%), which applies notwithstanding clause 2.2.

C7. Cancellation payment

C7.1 Payment is by milestone as set out in the Order Acknowledgment. This clause governs every cancellation or termination of an Order for Custom Goods however arising under these Conditions, including under clauses 2.5, 4.3, 9.3 and 10, and the applicable case is determined by clauses C7.2 to C7.4.

C7.2 Cancellation by the Buyer or for the Buyer's default. Where the Buyer cancels, where an Order is treated as cancelled under clause C5.2, or where the Seller terminates under clause 10.3, the Buyer shall pay the aggregate of costs incurred by the Seller to the date of cancellation, costs irrevocably committed including supplier and subcontractor cancellation charges, reasonable wind-down costs, and the Seller's margin upon the cancelled work, less costs genuinely avoided by the Seller and less the net proceeds actually recovered upon any resale or redeployment.

C7.3 Cancellation for force majeure. Where an Order is cancelled under clause 9.3, the Buyer shall pay for work performed and costs irrevocably committed to the date of cancellation. No margin upon uncompleted work is payable.

C7.4 Cancellation for the Seller's delay. Where the Buyer cancels under clause C5.4, the settlement in that clause applies and no sum is payable under clause C7.2. For the avoidance of doubt, no margin upon cancelled work is payable to the Seller in that case.

C7.5 The parties acknowledge that the Seller has a legitimate interest in performance of an Order for Custom Goods beyond the recovery of damages, because such Goods are engineered to the Buyer's requirement, have no ready resale market, and commit engineering capacity and supplier slots which cannot be redeployed at short notice. The payment under clause C7.2 is agreed as a proportionate protection of that interest and is a primary obligation, not a remedy for breach.

C7.6 In respect of any sum payable under this clause the Seller shall use commercially reasonable endeavours to mitigate, including by seeking resale or redeployment, and shall on request evidence the costs, avoided costs and recoveries comprising it. The Seller is not obliged to identify an alternative customer, to market the Goods for any period, or to accept any offer below the Seller's cost, and credit is given only for proceeds actually received.

C8. Intellectual property

C8.1 Clause 7 applies. For the avoidance of doubt, the Seller's Background IP, including its platform architecture, control systems, software libraries, engineering methods and process knowledge, and any improvement, derivative or extension of it, remains vested in the Seller whether or not its development was funded by the Buyer's Order, and the Buyer receives the licence in clause 7.4.

Schedule D — Custody.

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Applies where the Order Acknowledgment identifies the Custody model. To be read with the Terms of Sale and Services (clauses 1–12), Rev 4.1, which apply to every Order.

D1. Title and standard of care

- D1.1** Title to goods received under this Schedule remains vested in the Buyer or its supplier at all times, and no retention of title arises in favour of the Seller in respect of such goods. The Seller holds them as bailee only.
- D1.2** The Seller shall exercise reasonable care in the receipt, handling, storage and despatch of such goods and shall keep them separately identifiable as the Buyer's property.
- D1.3** The Buyer shall insure such goods against loss and damage. The Buyer may notify a declared value for a consignment, which takes effect only upon the Seller's written acceptance and may be subject to an additional charge. The Seller's liability is limited as provided by clause 8.4.

D2. Storage, lien and disposal

- D2.1** The Seller shall hold goods free of storage charge for the period stated in the Order Acknowledgment or, absent such statement, thirty (30) days. Thereafter storage accrues at the rate stated or, absent a stated rate, at the Seller's actual third-party cost plus a handling charge of fifteen per cent (15%), which applies notwithstanding clause 2.2.
- D2.2** The Seller has a general lien over goods owned by the Buyer, and over documents relating to them, in the Seller's possession for all sums owing by the Buyer upon any account. This clause does not create a lien over goods owned by a third party.
- D2.3** Where goods remain unclaimed and any sum remains unpaid for ninety (90) days after written notice that the goods are ready, the Seller may, upon a further twenty-one (21) days' written notice, sell the goods by any commercially reasonable means and apply the net proceeds against sums owing. Any surplus is remitted to the Buyer and any shortfall remains payable.
- D2.4** The rights in clauses D2.2 and D2.3 apply only to the extent permitted by the mandatory law of the jurisdiction in which the goods are situated, and the Seller shall comply with any mandatory notice, priority or disposition procedure applicable there.