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Drumgrange Ltd

Standard Terms and Conditions

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Unit A The Forum, Hanworth Lane, Chertsey, Surrey KT16 9JX

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1 Definitions

- 1 In these Conditions the following words and expressions shall have the following meanings, unless the context otherwise requires:
- 2 Agreement: means the contract between Drumgrange and the Supplier for the purchase of Goods and/or Services, constituted by the issue to the Supplier of a Purchase Order from Drumgrange, in each case which is accepted by the Supplier in accordance with Condition 3.26 and to which the Conditions shall apply.
- 3 Business Day: means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 4 Code of Conduct: means the Drumgrange Code of Conduct for Suppliers, as amended or replaced from time to time by Drumgrange.
- 5 Conditions: means these standard Terms and Conditions as amended from time to time in accordance with Condition 22.135.
- 6 Confidential Information: means any information received by a Party in connection with the performance of the Agreement relating to the business, assets, prices, finances, affairs, customers, potential customers, clients or suppliers of the other Party (or its affiliates) and includes the commercial terms of the Agreement, any Specification and Materials.
- 7 Data Protection Law: means all applicable data protection and privacy legislation in force from time to time in the UK, including the General Data Protection Regulation ((EU) 2016/679) (the “**GDPR**”), the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended.
- 8 Deliverables: means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
- 9 Delivery: means the delivery of the Goods and/or Services to Drumgrange at the address specified in accordance with Condition 7, and in the case of Goods shall be DDP (Incoterms 2020) or as otherwise agreed in writing by the Parties.
- 10 Drumgrange: means Drumgrange Limited registered in England and Wales with company number 1460044.
- 11 Goods: means all materials, components, goods, equipment, and other items (including any part or part supply of them) set out in the Purchase Order.

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- 12 Force Majeure: means an event or circumstance which is beyond the reasonable control of a Party which by its nature could not reasonably have been foreseen by that Party and which prevents or delays that Party from performing its obligations under the Agreement, including without limitation acts of God, fire, unexpected flooding and other extreme weather conditions, explosion, power failure or severe reduction in power supplies, war or acts of terrorism, pandemics, the act of any government or authority and strikes, lock-outs and labour disputes (in each case, of national and not merely local effect).
- 13 Intellectual Property Rights: means patents, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how) and any other Intellectual Property rights, in each case whether registered or unregistered and including all applications (or rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 14 Materials: has the meaning ascribed to it at Condition 16.
- 15 Party: means Drumgrange or the Supplier, as the case may be, and "Parties" means both of them.
- 16 Purchase Order: means Drumgrange's order for the supply of Goods and/or Services as set out in Drumgrange's Purchase Order.
- 17 Services: means the Services, including any Deliverables, to be performed by the Supplier, which may include some or all of the following: engineering, construction, installation and/or commissioning, pursuant to the Agreement as may be set out further in the Specification.
- 18 Specification: any Specification for the Goods and/or Services, including any related plans and drawings, data, samples or other descriptions, including dimensions, colour, finish, materials and tolerances and any written instructions or information in each case, that is agreed between the Parties.
- 19 Supplier: means any person with whom Drumgrange enters into an Agreement and such expression includes (where the context requires) all officers, employees, representatives, affiliates, or agents employed or acting on behalf of the Supplier.
- 20 UK GDPR: has the meaning given to it in section 18.118 (as supplemented by section 205(4)) of the Data Protection Act 2018.
- 21 VAT: means value added tax or other applicable indirect sales tax.

2 Interpretation

- 22 In these Conditions the following rules of interpretation shall apply:
- (1) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- (2) A reference to a Party includes its personal representatives, successors and permitted assigns.
- (3) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (4) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (5) Except where the context otherwise requires the singular includes the plural and vice versa.
- (6) A reference to **writing** or **written** excludes fax but not email.
- (7) Each of these Conditions shall apply to the supply of both Goods and Services, except where the application to one or the other is expressly stated.

3 The Agreement

- 23 The Purchase Order constitutes an offer by Drumgrange to purchase Goods and/or Services from the Supplier in accordance with these Conditions.
- 24 The Purchase Order shall be deemed to be accepted on the earlier of:
 - (1) the Supplier issuing written or verbal acceptance of the Purchase Order; or
 - (2) any act by the Supplier consistent with fulfilling the Purchase Order.at which point the Agreement shall come into existence. If the Supplier is unable to accept a Purchase Order, it shall notify Drumgrange promptly and in any event within 3 Business Days.
- 25 A Purchase Order may be:
 - (1) withdrawn or amended by Drumgrange at any time before acceptance by the Supplier;
 - (2) amended by Drumgrange after it has been accepted by the Supplier, with the agreement of the Supplier (such agreement not to be unreasonably withheld or delayed);
 - (3) cancelled by Drumgrange after it has been accepted by the Supplier, provided that Drumgrange shall reimburse the Supplier for the reasonable costs actually and directly incurred by the Supplier in performing the Purchase Order up to the date of cancellation, and provided that the Supplier will use reasonable efforts to mitigate such costs and the Supplier will not be entitled to any lost profit in relation to the cancelled Purchase Order.

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- 26 Unless otherwise mutually agreed in writing by the Parties these Conditions shall apply to all Purchase Orders placed by Drumgrange with the Supplier for the purchase of Goods and/or Services, to the exclusion of any other terms that the Supplier seeks to impose or incorporate unless such terms are signed by an authorised representative of Drumgrange, or which are implied by trade, custom, practice or course of dealing. These Conditions supersede any Terms and Conditions of purchase or supply previously issued by Drumgrange.
- 27 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.
- 28 The Supplier shall ensure that at all times it:
- (1) has and maintains all the necessary licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement in respect of the supply of the Goods and/or Services;
 - (2) complies with all applicable laws, regulations and standards;
 - (3) complies with the Code of Conduct and such other policies as Drumgrange may notify to the Supplier from time to time. The Code of Conduct and such other notified policies shall be deemed incorporated within the Agreement. Supplier acknowledges that it has received a copy of the Code of Conduct.
- 29 The Supplier acknowledges that Drumgrange is a signatory of the Armed Forces Covenant (the “**Covenant**”). Drumgrange encourages the vendors within its supply chain to become a signatory of the Covenant. Furthermore, the Supplier agrees that, in performing its obligations under the Agreement, it shall not do anything which undermines the ethos of the Covenant.
- 30 The Supplier shall not do or omit to do anything which may cause Drumgrange to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business.

4 Price and Payment

- 31 Unless otherwise agreed in writing by Drumgrange, the price for the Goods shall be:
- (1) the price set out in the Purchase Order, or if no price is quoted, the price set out in the Supplier’s published price list in force at the date of the Purchase Order; and
 - (2) DDP (Incoterms 2020), and inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by Drumgrange.
- 32 The price for the Services shall be set out in the Purchase Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by Drumgrange, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

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- 33 In respect of the Goods, the Supplier shall invoice Drumgrange on or at any time after completion of delivery and in respect of Services, the Supplier shall invoice Drumgrange on completion of the Services. Each invoice shall be addressed and sent to Drumgrange's Accounts Department by email to accounts@drumgrange.com or, to the extent that the Supplier is unable to send an invoice by email, by first-class post to the address specified in accordance with Condition 22.138(2). Each invoice shall include such supporting information required by Drumgrange to verify the accuracy of the invoice, including the relevant Purchase Order number.
- 34 Unless otherwise agreed in writing, in consideration of the supply of Goods and/or Services by the Supplier, Drumgrange shall pay the invoiced amounts within 30 days of the end of the month in which the Supplier sends a correctly rendered invoice, to a bank account nominated in writing by the Supplier.
- 35 All amounts payable by Drumgrange under the Agreement are exclusive of any VAT. Where any taxable supply for VAT purposes is made under the Agreement by the Supplier to Drumgrange, Drumgrange shall after receipt of a valid VAT invoice from the Supplier pay to the Supplier (at the same time as payment of the price is due) such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services.
- 36 Drumgrange shall, in performing its obligations under the Agreement, comply with the standards for payment practices as set out in the Prompt Payment Code (the "PPC Standards"), as administered and updated from time to time. Drumgrange encourages its supply chain partners to equally adhere to the PPC Standards within their own supply chains.
- 37 If a Party fails to make any payment due to the other Party under the Agreement by the due date for payment, then the defaulting Party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgement. Interest under this Condition 4.36 will accrue each date at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from the date upon which the dispute is resolved until payment.
- 38 Upon Drumgrange's request, the Supplier shall provide a statement of account, addressed and sent to Drumgrange's Accounts Department by email to accounts@drumgrange.com. Any such statements shall list all invoices issued to Drumgrange which are unpaid with cross references to the appropriate Purchase Order number (if any) in order that any disputes/discrepancies can be dealt with in a timely manner.
- 39 Drumgrange may at any time, without notice to the Supplier, set off any liability of the Supplier to Drumgrange against any liability of Drumgrange to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Agreement. Any exercise by Drumgrange of its rights under this Condition 4.39 shall not limit or affect any other rights or remedies available to it under the Agreement or otherwise.
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40 For clarity, the price for any Goods and/or Services shall not be increased without the prior written consent of Drumgrange, whether due to an increase in the Supplier's direct or indirect costs and expenses in connection with the supply of the Goods and/or performance of the Services, additional Goods or Services being required due to an error of the Supplier, increased material, labour or transport costs, fluctuation in rates of exchange or otherwise howsoever arising.

5 Supply of Goods

41 It shall be a Condition of the Agreement that all Goods shall:

- (1) comply in all respects with their description and any applicable Specification;
- (2) be of best quality for use in the manufacture of products of Drumgrange;
- (3) be fit for any purpose held out by the Supplier or made known to the Supplier by Drumgrange, expressly or by implication, and in this respect Drumgrange relies on the Supplier's skill and judgement;
- (4) be free from defects in design, materials and workmanship upon delivery and for a period expiring (i) 12 months from delivery by Drumgrange to its end purchaser of the relevant Drumgrange product into which the Goods have been incorporated or (ii) where the Goods are not for incorporation into a Drumgrange product, 12 months from the date of the Supplier's delivery of the Goods to Drumgrange.
- (5) comply with all applicable statutory and regulatory requirements, together with applicable standards (including ISO) relating to the manufacture, labelling, packaging, storage, handling, operation and delivery of goods.

42 Drumgrange 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 Agreement.

43 If following such inspection or testing Drumgrange considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at Condition 5.41, Drumgrange shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

44 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Agreement and Drumgrange shall have the right to Conduct further inspections and tests after the Supplier has carried out its remedial actions.

45 If the Goods are to be supplied from outside the United Kingdom, with each Delivery the Supplier shall, free of charge, automatically provide proof of origin satisfactory to Drumgrange (acting reasonably), including but not limited to the following:

- (1) movement certificate

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- (2) certificate of origin (certified by the competent chamber of commerce and the competent consulate or embassy, when requested as applicable);
 - (3) confirmation of origin; and
 - (4) declaration of origin,
- 46 Any certificates or documents listed at Condition 5.47 and 5.48 will include the Purchase Order number and project number (if any). The value of the Goods shall not be listed on any such certificate and unless otherwise agreed, the country of the Supplier will be considered to be the country of origin.
- 47 Goods which require a CE mark shall be CE-compliant, have a CE mark and a declaration of conformity (in the English language) will be provided by the Supplier.
- 48 Goods which require a UKCA (UK Conformity Assessed) mark shall be UKCA-compliant, have a UKCA mark and a declaration of conformity (in the English language) will be provided by the Supplier.
- 49 All fees, duties and extra charges resulting from the Supplier's failure to supply the documents listed at Condition 5.47 5.48 and/or 5.49 or from incorrect statements issued by the Supplier, shall be borne by the Supplier and the Supplier agrees to reimburse Drumgrange on demand for any such fees, duties and charges.
- 50 If so requested by Drumgrange, the Supplier will supply user manuals for the Goods in an agreed form, suitable to be passed to Drumgrange's end purchaser.
- 51 The Supplier confirms that the Goods shall be capable of being lawfully resold, whether separately or as part of Drumgrange's products, to the jurisdictions notified to the Supplier by Drumgrange from time to time and the Supplier will provide such documentation as Drumgrange may reasonably require to facilitate such resale of the Goods.
- 52 If the Goods incorporate any components sourced from third parties ("**Third Party Components**"), the Supplier will remain responsible for checking the Third Party Components which it receives to ensure that they comply with Condition 5.43.

6 Supply of Services

- 53 The Supplier shall meet any performance dates for the Services specified in the Purchase Order or that Drumgrange notifies to the Supplier and time is of the essence in relation to any of those performance dates.
- 54 In providing the Services, the Supplier warrants that it shall:
- (1) cooperate with Drumgrange in all matters relating to the Services, and comply with all of Drumgrange's instructions;
 - (2) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - (3) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement:

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- (4) ensure that the Services will conform with any Specification and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by Drumgrange;
 - (5) ensure all Deliverables are free from defects in design, materials, workmanship and installation, upon supply and for a period expiring (i) 12 months from delivery by Drumgrange to its end purchaser of the relevant Drumgrange product to which the Deliverables relate or into which the Deliverables have been incorporated or (ii) where the Deliverables are not related to a Drumgrange product or are not for incorporation into a Drumgrange product, 12 months from the date of the supply of the Deliverable.
 - (6) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - (7) use the best quality goods, materials, standards and techniques;
 - (8) observe all health and safety rules and regulations and any other security requirements that apply at any of Drumgrange's premises; and
 - (9) comply with any additional obligations as set out in the Specification.
- 55 Drumgrange retain the right to restrict entry to our sites where a representative of the Supplier fails to meet professional standards of behaviour or follow the required company procedures for supplying to the Ministry of Defence or other customers as we feel fit.

7 Delivery

- 56 The Supplier shall ensure that:
- (1) it complies with the correct delivery and packaging standards which shall form an integral part of the Agreement;
 - (2) the goods are properly packaged and secured in such manner so as to enable them to reach their destination in good condition;
 - (3) each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number, 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 are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 57 The Supplier shall deliver the Goods:
- (1) on the date(s) and if specified, at the time(s), set out in the Purchase Order, as amended where applicable under Condition 3.27, or as otherwise agreed by the parties in writing, or, if no date or time is specified in the Purchase Order or otherwise agreed, within a reasonable time of the communication of the Purchase Order by Drumgrange to the Supplier;
 - (2) to the address specified in the Purchase Order or as instructed by Drumgrange before the time for delivery ("**Delivery Location**"); and

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- (3) during Drumgrange's normal hours of business on a Business Day, 0800 – 1600 Monday – Friday, or as instructed by Drumgrange.
- 58 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 59 The Supplier shall not deliver the Goods in instalments without Drumgrange's prior written consent. Where it is agreed that the Goods are 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 Drumgrange to the remedies set out in Condition 8.
- 60 Risk in the Goods shall pass to Drumgrange upon delivery of the Goods and completion of unloading of the Goods at the Delivery Location.
- 61 Ownership of the Goods shall pass to Drumgrange upon the earlier of payment or delivery of the Goods.
- 62 Upon delivery or in advance of delivery, at Drumgrange's election, the Supplier shall provide Drumgrange with all relevant inspection documentation, which shall include but not be limited to reports on quality control, test certificates, time schedules, progress reports and any danger/ risk analysis documentation in respect of CE and/or UKCA marks.
- 63 Drumgrange shall not be obliged to inspect and test the Goods immediately upon or following delivery and shall be entitled to leave Goods packaged and wrapped until such time as they are required for installation or use in the manufacturing of Drumgrange's products. If, following inspection and/or testing, Drumgrange determines that the Goods do not comply with the Supplier's undertakings at Condition 5.43, Drumgrange will notify the Supplier and the Supplier will collect the Goods without delay.

8 Drumgrange Remedies

- 64 If the Supplier (i) fails to deliver the Goods and/or perform the Services by the applicable date (ii) has delivered Goods that do not comply with undertakings at Condition 5.43 and/or 5.41(3) has supplied Services that do not comply with the requirements of Condition 6.54(4) or Condition 6.54(5) Drumgrange shall, without limiting or affecting other rights or remedies available to it, have any one or more of the following rights and remedies (as applicable):
- (1) to terminate the Agreement with immediate effect by giving notice to the Supplier;
 - (2) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
 - (3) in the event of a defect occurring in the Goods within the warranty periods specified in Conditions 5.41(5) and 6.54(5) to require, without delay a repair and/or replacement of the Goods, at the cost of the Supplier, with any repair or replacement to take place at an address designated by Drumgrange;

- (4) to recover from the Supplier any costs incurred by Drumgrange in obtaining substitute Goods and/or Services from a third party;
- (5) to require a refund from the Supplier of sums paid in advance for Goods and/or Services not delivered or performed (as applicable); and
- (6) to claim damages for any additional costs, loss or expenses incurred by Drumgrange which are in any way attributable to the Supplier's failure to meet applicable dates.

65 The remedy at Condition 8.66(3) will apply to serial defects, including circumstances where the defects have not yet been found in all the supplies of the same kind.

66 Notwithstanding the remedy at 8.66(3) if:

- (1) the defect is a minor defect, being a replacement or repair with a value of no more than £500, such value to be assessed by Drumgrange (acting reasonably); or
- (2) if the defect's rectification or replacement is required for safety reasons; or
- (3) the Supplier fails to repair or replace any defect within a reasonable time,

Drumgrange may remedy the defect immediately and without notification to the Supplier and will be entitled to recover the costs arising from such remedy from the Supplier without affecting Drumgrange's rights or the Supplier's obligations, including warranty obligations, under the Agreement.

67 If the parties are unable to agree on the existence of a defect, the Supplier will in any event be obliged to repair or replace the defect at its cost. If, after repair or rectification of the alleged defect, the Supplier is able to prove that the alleged defect was incorrectly claimed as a defect, Drumgrange will refund the reasonable costs of the Supplier in remedying the defect.

68 These Conditions shall extend to any substituted or remedial Services and/or repaired or replacement goods supplied by the Supplier.

69 Drumgrange's rights and remedies under the Agreement are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

9 Termination

70 Either Party may terminate the Agreement immediately by giving written notice to the other Party if:

- (1) the other Party commits a material or persistent breach of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of receipt of notice of the breach;
- (2) the other Party is dishonest or fraudulent in relation to the Agreement;

- (3) the other Party 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), obtaining a moratorium, 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;
- (4) the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (5) the other Party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Agreement is in jeopardy.

71 Drumgrange may terminate the Agreement with immediate effect by giving written notice to the Supplier if there is a change of control of the Supplier.

72 Upon termination of the Agreement, the Supplier shall immediately deliver to Drumgrange all Deliverables whether or not then complete and return all materials. If the Supplier fails to do so, then Drumgrange may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement.

73 Any termination of the Agreement will be without prejudice to any other rights or remedies of either Party under the Agreement or at law and will not affect any accrued rights or liabilities of either Party at the date of termination.

74 The termination of the Agreement for any reason will not affect the coming into force or the continuation in force of any of its provisions which expressly or by implication are intended to come into force or continue in force on or after termination of the Agreement.

10 Indemnity

75 The Supplier shall indemnify Drumgrange against all liabilities, costs, expenses, damages, and losses (including any direct, indirect or consequential 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 Drumgrange arising out of or in connection with:

- (1) any claim against Drumgrange by a third party arising out of, or in connection with the supply of the Goods, as delivered, or the Services;
- (2) any claim made against Drumgrange by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables;

- (3) claims in respect of death, personal injury or damage to property (in each case to the extent due to the act or omission of the Supplier or any of its employees, agents or subcontractors) of any employee, agent or subcontractor of the Supplier whilst at Drumgrange's premises or other places of business;
- (4) breach of any warranty given by Drumgrange in relation to the Goods and/or Services (including, without limitation, any warranty given by Drumgrange in respect of any products incorporating the Goods and/or Services) which arises out of, or is connected with, breach of a warranty given by the Supplier to Drumgrange;
- (5) any claim made against Drumgrange for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods and/or receipt, use or supply of the Services (excluding the materials);
- (6) the Supplier's (or its sub-processor's) failure to comply with the provisions of Condition 18 (Data Protection) or Data Protection Law; and
- (7) any claim brought or assessment made by HMRC against Drumgrange, or liability to tax incurred by Drumgrange, based on worker status (including reasonable costs and expenses) arising out of or in connection with the supply of the Goods and/or Services.

76 This Condition 10 shall survive termination of the Agreement.

11 Insurance

77 The Supplier shall maintain in force at its cost, employer's liability insurance, product liability insurance, public liability insurance and where relevant professional indemnity insurance, each for no less than £1,000,000 (or such other amount as may be agreed in writing between the parties) with a reputable insurer to cover the liabilities that may arise under or in connection with the Agreement. The Supplier shall produce on demand documentary evidence satisfactory to Drumgrange of details of cover.

78 The provisions of this Condition 11 shall survive the expiry or termination of the Agreement howsoever arising.

12 Health and Safety

79 If the Supplier works at, or visits, Drumgrange's premises, the Supplier will strictly observe and follow all Drumgrange's requirements for contractors and visitors to Drumgrange's premises and shall adhere to guidance contained in Drumgrange's Health and Safety policies. The Supplier shall be responsible for supplying any required personal protective equipment required for its work or visit.

13 Anti-bribery & Corruption

- 80 The Supplier agrees that it will not, in connection with the Agreement, bribe, or attempt to bribe (which shall include, without limitation, any offer of any form of payment, gift or other form of inducement, reward or advantage (whether of money or anything of value)) Drumgrange, or any of Drumgrange's employees, agents, representatives, affiliates or persons employed by or acting on behalf of Drumgrange, any customers, potential customers, any public or government officials or employees, public international organisations, political parties, or private individuals or other entities ("**Relevant Parties**").
- 81 The Supplier represents and warrants to Drumgrange that it has not, prior to the date of the Agreement, bribed or attempted to bribe any relevant parties in order to secure and/or retain any business for the Supplier or Drumgrange whether in connection with the Agreement or otherwise.
- 82 The Supplier acknowledges and agrees that it is familiar with and will abide by the anti-bribery and anti-money laundering laws in all the countries in which it is incorporated or established and in which it does business, including without limitation The Bribery Act 2010.
- 83 The Supplier agrees that it will not take or knowingly permit any action to be taken that would cause Drumgrange to be in violation of any applicable anti-bribery or anti-money laundering laws.
- 84 The Supplier agrees that its books, records and all accounts shall accurately reflect any and all payments in respect of transactions of the Supplier whether under the Agreement or otherwise, and Drumgrange (and Drumgrange's authorised representatives) shall have the right to inspect audit and to take copies of the Supplier's books, records and accounts at any time on prior notice.
- 85 If the Supplier discovers that it has or may have violated any of the provisions in this Condition 13, the Supplier shall immediately notify Drumgrange and cooperate with any investigations by Drumgrange into such matters.
- 86 Without prejudice to the generality of Conditions 13.82 to 13.87 inclusive, the Supplier will establish and at all times maintain and implement such anti-bribery policies and procedures as may be reasonably required to ensure that it prevents bribery or attempted bribery taking place on the Supplier's behalf.
- 87 Drumgrange may terminate the Agreement immediately upon notice in the event of a breach of this Condition 13 by the Supplier.
- 88 Drumgrange shall not be required to make any payments to the Supplier that might otherwise be due from Drumgrange if such payments are related to a transaction in connection with which the Supplier has breached this Condition 13.

14 Prevention of Facilitation of Tax Evasion

- 89 The Supplier represents and warrants to Drumgrange that it complies with and has, since 2017, complied with all applicable laws, statutes, regulations, guidance, recognised practice and Codes relating to the prevention of tax evasion and/or the prevention of the facilitation of tax evasion (whether within, or outside of, the United Kingdom), including but not limited to the Criminal Finances Act 2017 (“CFA 2017”).
- 90 The Supplier and its associated persons will not do, fail to do, or engage in, any practice, activity, conduct or thing which would (or the omission of which would) constitute either:
- (1) a UK tax evasion offence within the meaning of section 45(4) of the CFA 2017 (“UK Tax Evasion Offence”);
 - (2) a foreign tax evasion offence within the meaning of section 46(5) of the CFA 2017 (“Foreign Tax Evasion Offence”);
 - (3) a facilitation of a UK Tax Evasion Offence within the meaning of section 45(5) of the CFA 2017;
 - (4) a facilitation of a Foreign Tax Evasion Offence within the meaning of section 46(6) of the CFA 2017; or
 - (5) a failure to prevent a Facilitation Offence within the meaning of sections 45 or 46 of the CFA 2017.
- 91 The Supplier agrees that it and (where applicable) its associated persons will carry out periodic assessments of the risk of one or more of it and its employees and other associated persons committing a Facilitation Offence.
- 92 The Supplier agrees to have in place (and at all times maintain and implement) policies and procedures, including prevention procedures under the CFA 2017, to ensure continued compliance with the CFA 2017, and will take steps, so far as it is reasonably practicable to do so, to ensure that its associated persons adhere to those policies and procedures.
- 93 For the purpose of this Condition 14, the meaning of prevention procedures and associated persons shall be determined in accordance with sections 44(4), 44(5), 45(3) and 46(4) as applicable of the CFA 2017 (and any guidance issued under section 47 of the CFA 2017).
- 94 Drumgrange may terminate the Agreement immediately upon notice in the event of a breach of this Condition 14 by the Supplier.

15 Intellectual Property Rights

- 95 Any Foreground IPR shall vest in and be the absolute property of the Purchaser or its nominee. The Supplier assigns with full title guarantee and free from all third party rights any and all Foreground IPR to the Purchaser or its nominee and the Supplier shall (at its own cost) do all necessary acts to vest the Foreground IPR in the Purchaser or its nominee, including without limitation, executing or procuring the execution of documents. The Supplier may only use Foreground IPR as may be necessary for the purposes of performing any of its obligations under the Agreement.
- 96 The Background IPR of a Party shall remain vested in that Party or its licensor. Each Party grants to the other Party a non-exclusive and royalty-free licence to use such of its Background IPR as may be provided by that Party to the other Party to the extent necessary for the purposes of performing its obligations under the Agreement only. A Party shall not grant any sub-licences of any of the Background IPR of the other Party, unless expressly permitted in the Agreement.
- 97 If any of the Supplier's Background IPR is included in or is necessary for the use of any Supplies it must be clearly and legibly marked and/or identified by the Supplier and the Supplier grants to the Purchaser an irrevocable, perpetual, non-exclusive, worldwide and royalty-free licence (with the right to grant sub-licences) to use the Supplier's Background IPR as may be necessary to use and/or exploit the relevant Supplies and/or Foreground IPR.
- 98 The Supplier represents and warrants to the Purchaser that the Supplies and any Foreground IPR and Background IPR used by the Supplier in relation to the Supplies will not infringe any Intellectual Property Rights of a third party.
- 99 The Supplier shall indemnify each Indemnified Party against any and all liability, loss, claims, costs, expenses, damages, payments and royalties of any kind whatsoever incurred by an Indemnified Party as a result of or in connection with any claim or allegation that the Intellectual Property Rights owned or controlled by a third party are infringed by the use of the Supplies and/or any Background IPR of the Supplier or Foreground IPR.
- 100 Nothing in the Agreement shall give or be deemed to give either Party during or after the term of the Agreement any right, title or interest in any of the other Party's trademarks, service marks or trade names.

16 Drumgrange Materials

- 101 If the Supplier is provided any items (including, tooling, templates, jigs, samples, drawings, equipment, data and documents showing technical information) by Drumgrange for the purposes of fulfilling the Agreement ("Materials") the materials will at all times remain the property of Drumgrange and shall be clearly marked as such and stored by the Supplier apart from its own property.

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- 102 The Supplier shall unless otherwise specified in the Agreement or otherwise agreed in writing, retain the methods of reproducing the Goods for a period of 10 years from the last date of delivery of the Goods and thereafter or at any time during the course of the Agreement shall deliver the same, as mutually agreed by both parties, if requested by Drumgrange.
- 103 All the materials shall be at the sole risk of the Supplier at all times whilst they are in the possession of the Supplier. They must be kept securely in safe custody maintained in good condition until returned to Drumgrange.
- 104 The Supplier may use the materials for the purposes of the Agreement only and in particular, may not use the materials for the supply of goods or the provision of Services to any other person. For the avoidance of doubt, this shall prevent the supply of goods and/or provision of Services by the Supplier in which the Supplier uses the materials, to a Drumgrange distributor or an end purchaser, either directly or indirectly, without the prior written consent of Drumgrange.

17 Confidentiality

- 105 Each Party acknowledges that, during the term of the Agreement, it may have access to Confidential Information. Each Party shall:
- (1) use the Confidential Information solely for the purposes of exercising its rights and/or performing its obligations under or in connection with the Agreement; and
 - (2) not disclose to any person any Confidential Information except as permitted by Condition 17.107.
- 106 Each Party may disclose Confidential Information:
- (1) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under the Agreement. Each Party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the Confidential Information comply with this Condition 17; and
 - (2) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 107 The above undertakings as to confidentiality shall not apply to any information which a receiving Party can establish to the disclosing Party's reasonable satisfaction is at the date of disclosure in, or subsequently enters into, the public domain otherwise than as a consequence of any unauthorised disclosure, act or omission by the receiving Party. The provisions of this Condition 17 shall survive the expiry or termination of the Agreement howsoever arising.
- 108 The Supplier may be required to enter a separate confidentiality agreement, in which case, that confidentiality agreement shall take precedence over the provisions of this Condition 17.

18 Data Protection

- 109 In these Conditions, unless the context otherwise requires, the terms **controller, processor, processing/process, personal data** and **data subject** shall be interpreted and construed by reference to Data Protection Law.
- 110 The Supplier shall comply with its obligations under Data Protection Law when processing personal data. This Condition 18 is in addition to, and does not relieve, remove or replace, the Supplier's obligations or rights under Data Protection Law.
- 111 This Condition 18 applies to personal data processed by the Supplier in connection with the performance by the Supplier of its obligations under the Agreement. The Schedule (Data Processing) sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of Data Subject.
- 112 The Supplier shall only process the personal data for the purposes of performing its obligations under this Agreement and in accordance with the written instructions given by Drumgrange, unless the Supplier is subject to an obligation under applicable law of the UK, European Union or a member state of the European Union to do otherwise, in which case the Supplier shall notify Drumgrange in advance of that legal obligation (unless prohibited by that law on important grounds of public interest). The Supplier shall notify Drumgrange immediately if, in the Supplier's opinion, an instruction from Drumgrange breaches a requirement of Data Protection Law.
- 113 The Supplier shall at all times process the personal data in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical and organisational measures. The Supplier shall ensure that, at a minimum, the measures required under this Condition 18 meet the standard required by Data Protection Law, including Article 32 of the GDPR.
- 114 The Supplier shall ensure that all personnel with access to personal data are subject to a contractual duty of confidence to hold the personal data in strict confidence and only process the personal data in the manner permitted by this Condition 18.
- 115 The Supplier shall, at Drumgrange's request and in accordance with Drumgrange's instructions, assist Drumgrange: (i) in responding to, and complying with, all data subject rights requests relating to the personal data (each a Request), including by providing to Drumgrange such assistance as is contemplated by Article 28(3)(e) of the GDPR; and (ii) in ensuring compliance with the obligations in Articles 32 to 36 of the GDPR (and equivalent requirements of other Data Protection Laws). The Supplier shall promptly (and in any event within twenty four (24) hours) notify Drumgrange of each Request it receives and shall not respond to the Request, except as instructed by Drumgrange.

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- 116 The Supplier shall promptly (and in any event within twenty four (24) hours) notify Drumgrange in writing of each personal data breach (as defined in the GDPR) of which it becomes aware. The Supplier shall (to the extent feasible) ensure that the initial notification contains the information required under Article 33(3) of the GDPR and such other information as Drumgrange may require. The Supplier shall take such steps and provide such support, assistance and information to Drumgrange as Drumgrange requires to deal with and respond to the personal data breach, including conducting a full investigation and taking steps to contain and mitigate the impact of the breach.
- 117 The Supplier shall not transfer, access or process the personal data outside of the UK, EEA or any other Supplier worldwide outside of these areas, except where expressly authorised by Drumgrange in writing to do so and after taking such steps as are requested by Drumgrange to ensure that the transfer, access or processing complies with Data Protection.
- 118 The Supplier shall not subcontract the processing of personal data to a sub-processor without the prior written consent of Drumgrange. In the event that Drumgrange provides its consent, the Supplier shall (prior to the sub-processor processing the personal data) enter into an agreement with the sub-processor on terms that provide at least the same level of protection for the personal data as this Condition 18 and meet the requirements of Data Protection Law; the Supplier shall ensure that the agreement remains in force for the duration of the sub-processor's processing of personal data. The Supplier shall remain fully liable for the acts and omissions of each sub-processor.
- 119 The Supplier shall (at Drumgrange's option) securely return to Drumgrange or securely destroy the personal data, together with all copies in any form and in any media, in the Supplier's power, possession or control promptly following the earlier of: (i) termination or expiry of the Agreement; or (ii) a request from Drumgrange.
- 120 The Supplier shall provide Drumgrange with all information requested by Drumgrange to enable Drumgrange to verify the Supplier's (and each sub-processor's) compliance with this Condition 18. Without prejudice to the foregoing, Drumgrange shall be entitled to inspect, test and audit or appoint representatives to inspect, test and audit, all facilities, premises, equipment, systems, documents and electronic data relating to the processing of personal data by or on behalf of the Supplier and the Supplier shall cooperate and assist Drumgrange (and its representatives) with each inspection, test and audit.
- 121 Without prejudice to Drumgrange's other rights and remedies, in the event that Drumgrange identifies any non-compliance with this Agreement as a result of the exercise of its rights under Condition 18.122, the Supplier shall: (i) remedy the non-compliance and shall take such steps as Drumgrange reasonably requests for this purpose; and (ii) reimburse Drumgrange for the costs and expenses incurred by Drumgrange in connection with the exercise of those rights.
- 122 If there is any inconsistency or conflict between any of the provisions of this Condition 18 and the other provisions of the Agreement, the provisions of this Condition 18 shall prevail to the extent required to enable the Parties to comply with Data Protection Law.
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123 This Condition 18 shall survive termination or expiry of the Agreement.

19 Force Majeure

124 If either Party is affected by Force Majeure ("**the Affected Party**") it shall promptly notify the other Party of the nature of the Force Majeure and an estimate of the effects and likely duration thereof.

125 The Affected Party shall not be deemed to be in breach of the Agreement, or otherwise be liable to the other, for any delay in its obligations to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other Party provided that the Affected Party has not defaulted in performing the obligation before the Force Majeure event occurs.

126 The Affected Party shall use reasonable endeavours to continue to perform all of its obligations and shall promptly take steps reasonably required by the other Party to avoid or mitigate losses to that other Party arising from the delayed performance.

127 If the Force Majeure delay claimed by the Affected Party continues for a period in excess of 45 days, notwithstanding any other provision of the Agreement the other Party shall be entitled to terminate the Agreement upon not less than fourteen days' notice to the Affected Party, after which neither Party shall be under any liability to the other Party under the Agreement, except in respect of accrued rights.

20 Law and Jurisdiction

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

129 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

21 Dispute Resolution

130 If any dispute (including any non-contractual dispute) ("Dispute") arises out of or in connection with the Agreement, the Parties agree to enter into mediation to settle the dispute and will do so in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the Parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR.

131 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the dispute in accordance with Condition 20.129 which clause shall apply at all times.

22 General

- 132 The Agreement contains the entire agreement to standard Terms and Conditions between the Parties and supersedes all previous agreements and understandings between the Parties with respect to the Agreement. Any specific flow down conditions will be referenced in the Purchase Order or a standalone document as agreed between both Parties.
- 133 No employee or agent of Drumgrange has the authority to vary these Conditions, which may only be varied in writing signed by a member of the senior management team or director of Drumgrange. Drumgrange shall be entitled to rely on the execution by any individual purporting to bind the Supplier to a Purchase Order or any variation of these Conditions, unless otherwise notified in advance by a director of the Supplier.
- 134 Except as set out elsewhere in the Agreement, a person who is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 135 Drumgrange may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Agreement. The Supplier shall not transfer, assign, mortgage, charge, delegate, declare a trust over or deal in any other matter with any of its rights or obligations under the Agreement without the prior written consent of Drumgrange.
- 136 The Supplier may not subcontract any or all of its rights or obligations under the Agreement without the prior written consent of Drumgrange. If Drumgrange 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.
- 137 The Supplier shall not be entitled to create or do anything which will result in the creation of any lien, encumbrance, right of retention or any other kind of security over the Goods or in respect of the Services and will ensure that a similar Condition is included in all contracts with its subcontractors.
- 138 All notices under the Agreement shall be given in English and in writing and shall be:
- (1) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
Drumgrange: Unit A, The Forum, Hanworth Lane, Chertsey, KT16 9JX
Supplier: Supplier's registered office address or such other address as agreed between the parties in writing
 - (2) sent by email to the address as instructed (or an address substituted in writing by the Party to be served):
 - (3) deemed to have been received (i) if delivered by hand, at the time the notice is left at the proper address (ii) 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 or (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

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- (4) This Condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 139 A waiver of any right under the Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 140 Unless otherwise specified any rights arising under the Agreement are cumulative and do not exclude rights provided by law.
- 141 If any provision (or part of a provision) of the Agreement is or becomes invalid, illegal or unenforceable it shall be deemed deleted but that shall not affect the validity and enforceability of the rest of the Agreement. If any provision of the Agreement is deemed deleted under this Condition 22.142 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 142 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party the agent of the other, or authorise either Party to make or enter into any commitments for or on behalf of the other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 143 Neither of the Parties shall, during the continuance of the Agreement or for a period of one (1) year thereafter, procure or induce or attempt to procure or induce (either on its own behalf or on behalf of any other person, firm, company or group) any senior employee, officer or other personnel of the other Party who has been directly involved in the Agreement to leave the employment of that Party.

Document Approvals

	Name	Signature	Date
Originator	Richard Fagan		04/05/2023
Responsible Authority	Technical Buyer		04/05/2023
Accountable Authority	Head of Operations		11/05/2023
Authorised	Managing Director		07/06/2023

Distribution

Name	Establishment	Copy
Master	Drumgrange Ltd	Soft

Change Record Sheet

Issue	Reason for Change	Date
3A	Update to new template and review (OST-420)	14/10/2022
3B	Update after internal and legal review	07/02/2023
4	Post review for approval	20/02/2023
4A	Update after internal review	11/04/2023
5	Post further review for approval	04/05/2023