

Important Notes

Application:	These Terms shall apply to all tenders, quotations and sales and MMD OEM Equipment, Spares and Services
Amendments:	No amendments may be made to these Terms without the written approval of MMD General Legal Counsel.

1. Interpretation and Definitions**1.1. In these Terms:****1.1.1. “Confidential Information”** shall include, but shall not be limited in its interpretation to:

1.1.1.1. any and all information in whatever form whether disclosed orally, in writing, on disc or any other media or whether eye-readable, machine-readable or in any other form relating to the business, operations, administration or strategic plans of the **Disclosing Party** or its Related Bodies Corporate, including, but not limited to information relating to any identities, addresses, telephone numbers, telefax and/or facsimile numbers of directors, employees, agents, brokers, principals, investors, manufacturers, clients, suppliers, information concerning materials, bill of materials, commercial information, trade secrets, tenders (accepted or not), processes, marketing and business information generally, financial information and records and financial institutions of the **Disclosing Party** or its Related Bodies Corporate;

1.1.1.2. without limiting clause 1.1.1, any and all information in whatever form whether disclosed orally, in writing, on disc or any other media or whether eye-readable, machine-readable or in any other form including, but not limited to, any Intellectual Property Rights, software, programs, code, data, data base(s), know-how, all secret knowledge, technical information and specifications, manufacturing techniques, contracts, projects, designs, drawings (including but not limited to general assembly and manufacturing), plans, concepts, ideas, circuit diagrams, instruction manuals, blueprints, electronic artwork, photos, samples, devices,

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- demonstrations, strategies, formulae, hardware and/or software system specifications, pc board diagrams of the **Disclosing Party** or its Related Bodies Corporate;
- 1.1.1.3. other information and documents of whatever description in which the **Disclosing Party** or its Related Bodies Corporate has an interest in being kept confidential, including but not limited to existing and future contracts and tenders in which the **Disclosing Party** or its Related Bodies Corporate is involved or for which it has or is in the process of tendering;
- 1.1.1.4. any information in whatever form whether disclosed orally, in writing, on disc or any other media or whether eye-readable, machine-readable or in any other form which at any stage (whether prior to or after the signing this Agreement) has been provided to the **Receiving Party**, or that is otherwise acquired or accessed by the **Receiving Party** from the **Disclosing Party** or its Related Bodies Corporate or any person engaged by the **Disclosing Party**;
- 1.1.1.5. any new additions or enhancements to the Confidential Information or value-added information provided by the **Disclosing Party** or its Related Bodies Corporate to the **Receiving Party** resulting from any services agreement which may regulate the relationship of the Parties subsequent to signing such services or other business agreement; and
- 1.1.1.6. any and all information as set out in clauses 1.1.1 to 1.1.1.5 belonging to a customer or supplier (including potential customer or supplier) of the **Disclosing Party** or its Related Bodies Corporate and disclosed by the customer to the **Disclosing Party** or its Related Bodies Corporate for the purposes of the **Disclosing Party's** business or the **Disclosing Party** Related Bodies Corporate's business;
- 1.1.1.7. Any site visits to customers and/or suppliers, or potential customers or suppliers of the **Disclosing Party** and information or knowledge obtained as a result of such site visits.
- 1.1.2. "**Customer**" means the person, firm, company, or entity that purchases or agrees to purchase MMD Equipment from **MMD**.

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- 1.1.3. **“Force Majeure”** means any event or circumstance beyond a Party’s reasonable control, including (without limitation) acts of God, war, invasion, hostilities, riot, terrorism, labour strikes, lock-outs, shortages of materials, fuel or labour, fire, flood, epidemic, pandemic, governmental action, export/import restrictions, sanctions, cyber-attacks, or any other event that could not reasonably have been foreseen at the date of the order.
- 1.1.4. **“Illegal Information Brokering”** means the practice by which certain parties approach contractors, sub-contractors, vendors and other suppliers, and offer confidential information or illicit influence in order to obtain business through corruption of competitive bidding processes.
- 1.1.5. **“Intellectual Property”** mean any name, trademarks (whether registered or not), business name or any patents, emblems, labels, designs or other industrial or commercial rights, logos, copyrighted material, trade names or other intellectual property right whatsoever of a Party, its Related Body Corporate and/or its customers.
- 1.1.6. **“MMD”** means any member of the MMD group of companies which enter into a Transaction with a **Customer** for MMD Equipment.
- 1.1.7. **“MMD Equipment”** means MMD OEM Equipment, Spares and Third Party Equipment;
- 1.1.8. **“MMD OEM Equipment”** means original equipment manufactured by **MMD**, including Spares.
- 1.1.9. **“Parties”** means **MMD** and the **Customer** and **“Party”** means either **MMD** or the **Customer**, depending on the context in which it is used.
- 1.1.10. **“Personnel”** means (a) in relation to **MMD**, any of its directors, officials or employees, sub-contractors (including sub-contractors’ Personnel), agents and representatives involved either directly or indirectly in the performance of the Supply; (b) in relation to the **Customer** any of its past or present directors, officers, employees, agents or representatives (if applicable)
- 1.1.11. **“Personal Information”** means ‘personal information’ as defined in the Privacy Act which is Confidential Information.

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- 1.1.12. **“Privacy Act”** means the General Data Protection Regulation 2016/679, and any regulations and codes, including any orders, directions, directives or other instruments made or issued under any of them, with which any Party is bound to comply.
- 1.1.13. **“Privacy Legislation”** mean:
- 1.1.13.1. the Privacy Act;
- 1.1.13.2. all other applicable laws, regulations and codes, including any orders, directions, directives or other instruments made or issued under any of them that apply to any Party in respect of its Processing of Personal Information; and
- 1.1.13.3. all privacy policies and other representations (whether or not contractual) made by, and contractual terms that apply to, a Party in respect of its Processing of Personal Information that are disclosed to or known by the other Party.
- 1.1.14. **“Related Body Corporate”** means, when used in relation to a Party:
- 1.1.14.1. a holding company of the Party;
- 1.1.14.2. a subsidiary of the Party; or
- 1.1.14.3. a subsidiary of a holding company of the Party.
- 1.1.15. **“Spares”** means spare parts for MMD OEM Equipment manufactured by **MMD**.
- 1.1.16. **“Services”** means work performed by employees and/or contractors of **MMD** in connection with MMD Equipment, including but not limited to installation, maintenance and/or repairs of MMD OEM Equipment and/or Spares.
- 1.1.17. **“Terms”** means the standard terms and conditions as set out in this document.
- 1.1.18. **“Transaction/s”** means any tenders, quotes, offers to sell and sales of all MMD Equipment, Spares and/or Third Party Equipment by **MMD** to the **Customer** and/or any offer to render or the rendering of any Services by **MMD** to a **Customer**.

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- 1.1.19. **“Third Party Equipment”** means any equipment, parts, or components not manufactured by **MMD** but supplied by **MMD** to the **Customer** either on its own or as part of MMD OEM Equipment and/or Spares.
- 1.1.20. **“Warranty Period”** means the applicable period set out in clauses 8.1.1 and 8.1.2 below.
- 1.1.21. **“Wear Components”** means consumable components subject to routine wear and tear, including but not limited to caps, segments, picks, and similar items, which are expressly excluded from this Warranty.
- 1.1.22. **“Writing”** or “written” means any manuscript, typewritten or printed statement and shall include letters, telegram, telefax, cablegram, electronic mail (e-mail) or wireless telegraphy.
- 1.2 Words importing the singular include the plural and **vice versa**.
- 1.3 A reference to one gender includes all other genders.
- 1.4 Headings are for convenience only and do not affect the interpretation of these Terms.
- 1.5 A reference to an act or legislation, or to a provision of an act or legislation, includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

2. Application of these Terms to a Transaction

- 2.1. These Terms shall apply to **ALL** Transactions between **MMD** and a **Customer** and shall prevail notwithstanding any terms, conditions or stipulations contained in negotiations, the **Customer’s** request for tenders/quotations, orders, purchase orders, correspondence and/or other documents and/or terms, conditions or stipulations on the **Customer’s** website or elsewhere.
- 2.2. All terms, conditions and/or stipulations contained in the **Customer’s** request for tenders/quotations, correspondence, orders or purchase orders, whether contained in, endorsed on or delivered with, which are in conflict with and/or in addition to these Terms shall be deemed to be *pro non scripto* and the execution of such an order or purchase order by **MMD** shall not have the effect of binding **MMD** to such conflicting and/or additional conditions, terms or stipulations.
- 2.3. **The only circumstances in which these Terms shall NOT apply to a Transaction is if:**

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- 2.3.1. **MMD and the Customer entered a formal written contract in respect of a Transaction where these Terms have been expressly excluded; or**
- 2.3.2. **A duly authorised representative of MMD, being a director or person appointed by MMD in writing as such, has confirmed in writing that these Terms, or any part thereof, shall not apply to a Transaction.**
- 2.4. These Terms shall apply irrespective of whether the **Customer** has been provided with a copy thereof or has had sight of same. The **Customer** shall however be entitled at any time to request in writing a copy thereof and same shall be provided to the **Customer** within a reasonable time. A copy is also available on **MMD's** website www.mmdsizers.com.
- 2.5. Any quotation by **MMD** in respect of a Transaction shall only be valid for a period of 30 calendar days from the date of the quotation, unless clearly stated otherwise in writing by **MMD**, and provided that **MMD** has not previously withdrawn the quotation.
- 2.6. The **Customer** shall ensure that its order contain any applicable specifications and that such specifications are complete and accurate. The **Customer** acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of **MMD** which is not set out in the order.
- 2.7. Each order or acceptance of a quotation for MMD Equipment by the **Customer** shall be deemed to be an offer by the **Customer** to buy the MMD Equipment subject to these Terms.
- 2.8. No order placed by the **Customer** shall be deemed to be accepted by **MMD** until a written acknowledgment of order is issued by **MMD** or (if earlier) **MMD** delivers the MMD Equipment or starts to provide the Services to the **Customer**, whereafter these Terms will constitute a valid and binding contract between **MMD** and the **Customer** on these Terms.
- 2.9. Notwithstanding anything to the contrary in these Terms, acceptance of delivery of the MMD Equipment or allowing **MMD** to start with the Services shall be deemed to be conclusive and irrevocable proof of the **Customer's** acceptance of these Terms.
- 3. Description of MMD Equipment and/or Services**
- 3.1. The quantity and description of the MMD Equipment shall be set out in **MMD's** tender, quotation or written acknowledgment of order, which forms an integral part of the contract between **MMD** and the **Customer**.

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- 3.2. All samples, drawings, descriptive matter, specifications and advertising issued by **MMD** and any descriptions or illustrations contained in **MMD**'s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the MMD Equipment described in them. They shall not form part of any Transaction between **MMD** and the **Customer** unless they have been expressly and in writing made part thereof.

4. Delivery, Ownership and Risk in the MMD Equipment

- 4.1. Delivery of all **MMD** Equipment shall be *ex-works* (Incoterms 2020), unless otherwise agreed by **MMD** in writing. If delivery is to be made at any place other than **MMD**'s premises, **MMD** shall be entitled to levy the reasonable charges of packing, loading, insurance, transporting and off-loading at the **Customer**, or the site indicated by the **Customer**, and the **Customer** shall be liable for same and liable to pay same to **MMD** on demand. **MMD** will however endeavour to provide the **Customer** with an indication of these costs before it delivers the MMD Equipment, but failure on the part of **MMD** to provide the **Customer** with such indication shall not relieve the **Customer** from its liability to pay same.
- 4.2. All risk in the MMD Equipment invoiced to the **Customer** shall pass to the **Customer** when the invoiced MMD Equipment are delivered to the **Customer** *ex-works* (Incoterms 2020) at **MMD** premises or loaded for transport to the **Customer** at **MMD**'s premises. The **Customer** shall insure the MMD Equipment from the time risk passes until title passes.
- 4.3. All ownership in and to the MMD Equipment invoiced to the **Customer** shall at all times and until the full purchase consideration in respect thereof shall have been paid, remain vested in **MMD**. The **Customer** shall keep the MMD Equipment separate, insured and clearly marked as **MMD**'s property. **MMD** shall have the right to enter the **Customer**'s premises to repossess the MMD Equipment if payment is not made.
- 4.4. Until ownership of the MMD Equipment has passed to the **Customer**, the **Customer** shall:
- 4.4.1. hold the MMD Equipment on a fiduciary basis as **MMD**'s bailee/agent;
- 4.4.2. store the MMD Equipment (at no cost to **MMD**) separately from all other goods of the **Customer** or any third party in such a way that they remain readily identifiable as **MMD**'s property;
- 4.4.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the

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MMD Equipment; and

- 4.4.4. maintain the MMD Equipment in satisfactory condition and keep them insured on **MMD's** behalf for their full price against all risks to the reasonable satisfaction of **MMD**.

On request the **Customer** shall produce the policy of insurance to **MMD**.

- 4.5. The **Customer's** right to possession of the **MMD** Equipment shall terminate immediately if:

- 4.5.1. the **Customer** has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purposes only of reconstruction or amalgamation or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the **Customer** or notice of intention to appoint an administrator is given by the **Customer** or its directors or by a qualifying floating charge holder, or a resolution is passed or a petition presented to any court for the winding-up of the **Customer** or for the granting of an administration order in respect of the **Customer**, or any proceedings are commenced relating to the insolvency or possible insolvency of the **Customer**; or

- 4.5.2. the **Customer** suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under a Transaction or any other contract between **MMD** and the **Customer** or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 of the United Kingdom, or any equivalent legislation, or the **Customer** ceases to trade; or

- 4.5.3. the **Customer** encumbers or in any way charges any of the MMD Equipment.

- 4.6. **MMD** shall be entitled to recover payment for the MMD Equipment notwithstanding that ownership of any of the MMD Equipment has not passed from **MMD**.

- 4.7. The **Customer** grants **MMD**, its agents and employees, an irrevocable licence/authority at any time to enter any premises where the MMD Equipment is or may be stored in order

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to inspect it, or, where the **Customer's** right to possession has terminated, to recover it.

- 4.8. Where **MMD** is unable to determine whether any MMD Equipment are the MMD Equipment in respect of which the **Customer's** right to possession has terminated, **MMD** shall be deemed to have sold all MMD Equipment of the kind sold by **MMD** to the **Customer** in the order in which they were invoiced to the **Customer**.
- 4.9. On termination of a Transaction, howsoever caused, **MMD's** (but not the **Customer's**) rights contained in this clause 4 shall remain in effect.

5. Storage

- 5.1. If the **Customer** fails to take delivery of the MMD Equipment on the delivery date, then **MMD** shall be entitled to charge the **Customer** storage costs in respect of the MMD Equipment which the **Customer** has failed to take delivery of.
- 5.2. The **Customer** also hereby irrevocably appoints **MMD** as its agent to sell the MMD Equipment in the event of the **Customer** failing to take delivery on the delivery date specified by **MMD** for delivery. **MMD** shall be entitled to set off any amount which it receives in the sale of the MMD Equipment first against disbursements, including storage, then against interest and lastly against the purchase price or balance thereof. **MMD** shall pay the balance of the sales amounts, after all disbursements, including storage, interest and the purchase price or balance thereof have been paid, to the **Customer**. **MMD's** right to so sell the MMD Equipment shall be without prejudice to any other rights which it may have in law or in terms of these Terms.

6. Delivery of Services

- 6.1. Whilst providing the Services to the **Customer** **MMD** shall maintain appropriate accounts and records of the Services provided (to include duration and/or quantity together with a breakdown of any expenses and materials) and shall remit the same to the **Customer** as soon as practicable after the end of each calendar month and/or upon completion of the provision of the Services. The **Customer** shall sign approval of the accounts and records which shall thereafter constitute evidence that **MMD's** obligations for the provision of the Services has been completed in full accordance with the provisions of the Contract.

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- 6.2. If within 7 (SEVEN) calendar days of delivery to the **Customer** of accounts and records in accordance with clause:
- 6.2.1. The **Customer** fails or declines to sign such accounts and records without providing reasonable and substantiated reasons therefore, then the accounts and record shall be deemed to be correct and agreed by both Parties.
- 6.2.2. Any liability of **MMD** for non-provision, incomplete provision or inadequate provision of the Services according to the terms of any Transaction shall be limited to completing the relevant part of the Services or alternatively issuing a credit note at the *pro rata* contract rate against any invoice raised for such Services, always subject to clauses 6.1 and 6.2.

7. Acknowledgement by Customer

- 7.1. **MMD** only provides the warranties and/or guarantees as specifically set out in these Terms.
- 7.2. Save as set out in these Terms all **MMD** Equipment are sold voetstoots, unless **MMD** has given the **Customer** a written warranty and/or guarantee in respect of the MMD Equipment.
- 7.3. The onus shall at all times be on the **Customer** to enquire from **MMD** whether there is any warranty and/or guarantee in respect of the MMD Equipment and what the nature and extent of the warranty and/or guarantee is.
- 7.4. **MMD** has confidence in the equipment and solutions which it supplies to its **Customers**, but the design, selection and manufacturing of MMD OEM Equipment are premised/based on the specifications, information and documentation provided by the **Customer**.
- 7.5. The **Customer** acknowledges and agrees that the MMD OEM Equipment is bespoke designed, selected and manufactured for the **Customer** and tailored to the unique requirements of the **Customer**, based on the specification, information and documentation provided by the **Customer** to **MMD**. **MMD** shall not be responsible for, and the **Customer** indemnifies and holds **MMD** free from any modifications, adaptations or performance issues arising from any changes, omissions, inaccuracies, or incompleteness in the specifications, information and documentation provided by the **Customer**.
- 7.6. Notwithstanding any other provision of these Terms, all warranties, guarantees, indemnities and representations made by **MMD** with respect to the design, manufacture, performance or

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operation of the MMD Equipment shall automatically lapse, terminate and be deemed null and void without further notice or action by **MMD** if any material processed by the MMD Equipment during its operation fails to comply one hundred percent (100%) with the material specifications. The **Customer** shall have no recourse against **MMD** for any claims arising therefrom. The **Customer** acknowledges and agrees that the MMD Equipment's performance is contingent upon strict adherence to the material specification, and any deviation therefrom voids all **MMD's** obligations under this Agreement.

8. Warranty on MMD OEM Equipment and Spares

8.1. **MMD** warrants that MMD OEM Equipment and Spares shall be free from defects in material and workmanship for the earlier of:

- 8.1.1. **12 (TWELVE) months** from the date of installation and/or successful commissioning or the beneficial/commercial use of the MMD Equipment and/or Spares; or
- 8.1.2. **18 (EIGHTEEN) months** from the date of delivery of the MMD Equipment and/or Spares to the **Customer**.

8.2. **MMD** warrants that all MMD OEM Equipment and/or Spares shall be:

- 8.2.1. new (unless repaired under this Warranty);
- 8.2.2. manufactured in accordance with **MMD** specifications, tolerances, and quality standards;
- 8.2.3. fit for the purpose for which they were designed when properly installed, maintained and used.

8.3. **MMD's** warranty shall immediately become null and void if:

- 8.3.1. the **Customer** misuses or abuses the MMD OEM Equipment and/or Spares;
- 8.3.2. the MMD OEM Equipment and/or Spares are not used for their intended purpose or are used with equipment not approved by **MMD**;
- 8.3.3. the MMD OEM Equipment and/or Spares are not installed, operated, or maintained in accordance with **MMD's** specifications, instructions, or recommended schedules;
- 8.3.4. the MMD OEM Equipment and/or Spares are altered, repaired, or modified by any person other than an authorised **MMD** representative;

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- 8.3.5. any wear components or spare parts are installed on MMD Equipment that are not supplied by **MMD**; or
- 8.3.6. the MMD OEM Equipment and/or Spares are resold, transferred, or otherwise disposed of by the **Customer**.

9. Warranty on Services

9.1. **MMD** warrants that the Services shall:

- 9.1.1. be performed by suitably qualified and experienced employees and/or contractors; and
- 9.1.2. be carried out with reasonable skill, care, diligence, and efficiency expected of a competent contractor providing services of a similar nature.
- 9.2. **MMD's** warranty on the Services shall remain valid for **6 (SIX) months** from the date on which the relevant Services were performed.

10. Warranty on Third Party Equipment

10.1. In respect of Third Party Equipment supplied by **MMD**, **MMD** shall:

- 10.1.1. pass through to the **Customer** the benefit of any manufacturer's warranty, or what is left thereof and to the extent permitted; and
- 10.1.2. assume no responsibility or liability beyond such pass-through warranty.

11. Exclusion of Wear Components

- 11.1. **MMD** does not provide any warranty in respect of Wear Components.
- 11.2. No claim may be made in respect of Wear Components, whether supplied alone or as part of MMD Equipment.
- 11.3. The replacement or repair of Wear Components, and any Services related thereto, shall be entirely for the **Customer's** account and invoiced at the agreed prices or, failing agreement, at **MMD's** prevailing prices and rates.

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12. Remedies

- 12.1. During the Warranty Period, **MMD** shall, at its sole discretion, repair or replace any defective MMD OEM Equipment and/or Spares or re-perform defective Services, provided that the **Customer** has notified **MMD** of the defect within the applicable Warranty Period.
- 12.2. Any MMD OEM Equipment and/or Spares repaired or replaced, or Services re-performed, under this warranty shall be subject to the Warranty Period set out in clauses 8.1.1 and 8.1.2, from the date on which such repairs or replacements or re-performed Services were done.
- 12.3. The remedies provided herein constitute the **Customer's** sole and exclusive remedy in respect of defective MMD OEM Equipment, Spares and/or Services.

13. Exclusion of Liability and Indemnity

13.1. Exclusion of Liability:

13.1.1. Notwithstanding any other provision of these Terms, **MMD** shall not be liable or responsible to the **Customer** or any other person for any claims, losses or damages of whatsoever nature, which may be suffered by the **Customer** or such other person arising out of or in connection with any MMD Equipment supplied by **MMD** and/or the use of the MMD Equipment. For the avoidance of any doubt, but without limiting the generality of the foregoing, the exclusion of liability set out above includes all liability arising out of contract, delict or otherwise, and damage suffered by the **Customer** or any other person, whether direct, indirect, special or consequential and whether such damage was foreseeable or not. This exclusion applies to the maximum extent permitted by law.

13.1.2. The **Customer** hereby indemnifies and holds harmless **MMD** and/or **MMD's** directors, officials, employees, servants and/or agents and/or any third party, of all liability and/or responsibility from any claim which may be instituted by any person, including such person's dependents, against **MMD** and/or **MMD's** directors, officials, employees, servants and/or agents and/or any third party, as a result of any injury or damages of whatsoever nature, including consequential and/or special damages and economic loss, which such person and/or his/her dependents may have suffered as a result of MMD Equipment. This indemnity shall include, but not

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be limited to, all judgments, liability, damages, penalties, losses and expenses, including attorney-and-client legal costs orders and disbursements, any amounts paid by **MMD** to its legal representative (and this amount is not limited to party-and-party or attorney-client scale costs) and all other amounts which may be suffered or assumed by or obtained against **MMD** and/or **MMD's** directors, officials, employees, servants and/or agents and/or any third party.

- 13.2. **MMD's** total aggregate liability for any claims arising under or in connection with this warranty, whether in contract, delict/tort, or otherwise, shall not exceed the price paid by the **Customer** to **MMD** for the specific MMD Equipment, Spares or Services giving rise to the claim.

14. Terms and Conditions of Payment

- 14.1. All prices are strictly net as quoted by **MMD** and no discounts are applicable for early payment or large orders unless otherwise agreed to in writing by **MMD**.
- 14.2. **MMD** shall issue a tax invoice to the **Customer** in respect of each order placed by the **Customer** and in accordance with **MMD's** practice in this regard from time to time.
- 14.3. The purchase price shall be paid without set-off, counterclaim or deduction for whatever reason by the **Customer** to **MMD** in readily available funds by electronic fund transfer to a bank account notified by **MMD** to the **Customer** from time to time.
- 14.4. If at any time payment is not made on the due date, then without prejudice to any other legal remedies which **MMD** may have in law, **MMD** shall be entitled, but shall not be obliged, to charge compounded interest on the amount due at the maximum rate permitted by law, from the due date until the full amount of the purchase price (or any balance), interest and costs have been settled by the **Customer**. A certificate signed by a director or manager of **MMD** shall be *prima facie* proof of the amount due.
- 14.5. In the event of the **Customer** defaulting on any payment due and/or failing to make payment timeously and/or committing any act of insolvency and/or assigning or surrendering his/her rights and/or suffering any default judgment against him/her which remains unsatisfied for more than 14 (FOURTEEN) days and/or being sequestrated, liquidated or placed under judicial management or otherwise wound up, whether provisionally or finally and/or entering into any compromise with any of his/her creditors, then **MMD** shall have the right without

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prejudice to any other rights which it may have at law or in terms of these Terms, to discontinue supply and to claim immediate payment of any and all amounts outstanding whether or not payment of such amounts would otherwise be due and owing, together with costs and interest as set out hereunder which may have accrued on such amount and which amount shall in such event immediately become fully due, owing and payable.

- 14.6. Payment shall only be deemed to have been received if, in the case of electronic transfer of funds, when the funds transfer reflects in **MMD's** account.
- 14.7. No indulgence granted by **MMD**, and no acceptance of payment by **MMD** other than in the form as prescribed above shall constitute a waiver or a negation by **MMD** of its rights in terms hereof.

15. Intellectual Property

- 15.1. The **Customer** acknowledges that all right, title and interest in and to the Intellectual Property vests in **MMD** and that the **Customer** has no claim of any nature in and to the Intellectual Property.
- 15.2. Any sale of the **MMD** Equipment does not constitute a right or license to use the Intellectual Property except for the limited purpose of operating the **MMD** Equipment.
- 15.3. The **Customer** shall not at any time dispute the validity or enforceability of such rights, or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of that right, title and interest of any of the Intellectual Property rights of **MMD** and shall not counsel or assist any other person to do so.
- 15.4. The **Customer** shall not register or attempt to register the trade marks in its own name or the name of any other entity anywhere in the world.
- 15.5. The **Customer** shall not, directly or indirectly, detract from, expand on, amend, decompile, reverse engineer, use, exploit, permit the use of, or in any other manner whatsoever apply the Intellectual Property for its benefit or the benefit of any other person or for any purpose whatsoever other than for the purpose of operating the **MMD** Equipment.
- 15.6. Where any designs, specifications or information have been supplied by the **Customer** for manufacture by **MMD** or to the order of the **Customer** then the **Customer** warrants that the use of those designs, specifications or information for the manufacture, processing, assembly

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or supply of the MMD Equipment shall not infringe the rights of any third party.

15.7. The **Customer** shall indemnify **MMD** against all claims, damages, penalties, costs and expenses, which arise out of or in connection with the **Customer's** infringement of any copyright, patent, registered design rights, design right or other Intellectual Property of **MMD** or any third party.

15.8. This clause 15 shall survive the termination of these Terms and any Transaction, however arising.

16. Confidentiality and publication

16.1. Title to the Confidential Information

The **Receiving Party** acknowledges that all right, title and interest in and to the Confidential Information vests in the **Disclosing Party** throughout the world and in perpetuity and that it has no claim of any nature in and to the Confidential Information.

16.2 Period of Confidentiality

The provisions of these Terms shall remain in force indefinitely.

16.3 Non-Disclosure Agreements

16.3.1 The **Receiving Party** undertakes to maintain the confidentiality of any Confidential Information to which the **Receiving Party** is allowed access by the **Disclosing Party**. The **Receiving Party** must not divulge or permit to be divulged to any person any aspect of such Confidential Information otherwise than may be allowed by these Terms.

16.3.2 The **Receiving Party** must hold the **Disclosing Party's** Confidential Information in strict confidence and restrict access thereto, and the use thereof, to such of its directors, employees and officers as have a need to know and any other person approved in writing by the **Disclosing Party** ('Permitted Persons'), save for and excluding its legal advisers for the purposes of legal advice.

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- 16.3.3 The **Receiving Party** will remain responsible at all times for ensuring that the confidentiality of any Confidential Information disclosed to its Permitted Persons is preserved and must procure that:
- 16.3.3.1 each Permitted Person strictly observes all of the **Receiving Party's** obligations under these Terms as if those obligations were imposed on that person; and
- 16.3.3.2 generally ensure that no officer, employee, adviser or agent of the **Receiving Party** does anything that, if done by the **Receiving Party**, would be inconsistent with these Terms.
- 16.3.4 The **Receiving Party** must take all such steps as may be reasonably necessary to prevent the Confidential Information falling into the hands of an unauthorised third party.
- 16.3.5 The **Receiving Party** shall not make use of any of the Confidential Information in the development, manufacture, marketing and/or sale of any goods without the prior written consent of the **Disclosing Party**.
- 16.3.6 The **Receiving Party** shall not use or disclose or attempt to use or disclose the Confidential Information for any purpose other than performing its contractual obligations to the **Disclosing Party** or exercising its rights.
- 16.3.7 The **Receiving Party** shall not use or attempt to use the Confidential Information in any manner which will cause or be likely to cause injury or loss to the **Disclosing Party**.
- 16.3.8 All documentation furnished to the **Receiving Party** by the **Disclosing Party** pursuant to these Terms will remain the property of the **Disclosing Party** and upon the request of the **Disclosing Party** will be returned to the **Disclosing Party**. The **Receiving Party** will not make copies of any such documentation without the prior written consent of the **Disclosing Party**, provided however **Receiving Party** shall not be required to delete all such Confidential Information from **Receiving Party's** back-up data. However, if the

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Confidential Information is restored from back-up systems, the terms and conditions of these Terms shall apply to such restored Confidential Information. Notwithstanding the foregoing, **Receiving Party** may retain, subject to these Terms, a copy of the Confidential Information as required for compliance with its internal recordkeeping requirements, but these Terms shall continue to apply to such Confidential Information.

16.3.9 Any material of a confidential nature which comes into the possession of the **Receiving Party** or one of its directors, employees, officers or agents, or which is generated by the **Receiving Party** and contains any such confidential information, or one of its directors, employees, officers or agents:

16.3.9.1 will be deemed to form part of the Confidential Information of the **Disclosing Party**;

16.3.9.2 will be deemed to be the property of the **Disclosing Party**;

16.3.9.3 must not be copied, reproduced, published or circulated by the **Receiving Party**;
and

16.3.9.4 must be surrendered to the **Disclosing Party** on demand,

unless the **Disclosing Party** provides its prior written consent to the contrary.

16.3.10 The **Receiving Party** must immediately take all steps necessary to prevent or stop, and comply with all reasonable directions of the **Disclosing Party** in respect of, suspected or actual breaches of these Terms.

16.3.11 The **Receiving Party** must promptly notify the **Disclosing Party** if it suspects, or becomes aware of, any loss or any unauthorised use, storage, copying or disclosure of the Confidential Information and must provide, at its cost, all reasonable assistance to the **Disclosing Party** in connection with any action that the **Disclosing Party** takes or

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proceedings that the **Disclosing Party** institutes in relation to the unauthorised use, storage, copying or disclosure.

- 16.3.12 Without limiting the generality of the foregoing, the Receiving Party shall not input, upload, transmit, or otherwise make available any Confidential Information to any publicly accessible or commercial artificial intelligence system, machine learning model, or automated data analytics platform, including but not limited to large language models, generative AI services (such as ChatGPT, Bard, Gemini, or similar tools), whether for the purposes of training, querying, or otherwise interacting with such platforms, unless explicitly authorised in writing by the Disclosing Party. This restriction shall apply regardless of whether the AI system is operated by a third party or internally by the Receiving Party, and regardless of whether the system purports to maintain confidentiality or anonymise user inputs.

16.4 Exceptions

- 16.4.1 The above undertakings by the **Receiving Party** relating to confidentiality will not apply to information which:
- 16.4.1.1 is in fact lawfully in the public domain; or
- 16.4.1.2 lawfully comes into the public domain otherwise than as a result of the conduct of the **Receiving Party** or one of its shareholders or agents; or
- 16.4.1.3 the **Receiving Party** is compelled to disclose by any applicable law or legally binding order of any court, government or semi-government authority, administrative or judicial body, or a requirement of a stock exchange or regulator.
- 16.4.2 The onus of proving the facts necessary to sustain any one of the exceptions listed in clauses 16.4.1.1 to 16.4.1.3 rests with the **Receiving Party**.
- 16.4.3 The **Receiving Party** must immediately after becoming aware of circumstances as contemplated in clause 16.4.1.3 above, advise the **Disclosing Party** in writing of such circumstances and if the **Receiving Party** is confronted with legal action to disclose the

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information received under this Agreement, the **Receiving Party** must promptly notify the **Disclosing Party** and give the **Disclosing Party** the opportunity to resist such legal action. The **Receiving Party** must reasonably assist the **Disclosing Party** in obtaining a protective order to ensure that any portion of the information required to be disclosed be used only for the purpose for which a court issues an order, or for such other purposes as required by law. Each Party will bear its own legal expenses in complying with this clause.

17. Privacy and data protection

17.1. Privacy Legislation – Warranty

17.1.1. Each Party agrees and warrants to the other Party that it will comply with its obligations under Privacy Legislation in respect of Personal Information obtained by or disclosed to it.

17.2. Data protection

17.2.1. In addition to its obligations under clause 17.1 the **Customer** agrees to:

17.2.1.1. only to collect, use, disclose or otherwise process Company Personal Information for the purpose of performing its obligations under these Terms or any Transaction, and as directed by **MMD**;

17.2.1.2. not disclose **MMD** Personal Information to any other person without **MMD's** prior written consent, unless the disclosure is required by law;

17.2.1.3. immediately notify **MMD** that the disclosure of **MMD** Personal Information may be required by law;

17.2.1.4. promptly notify **MMD** as soon as it receives an individual's complaint regarding the processing of their Company Personal Information and cooperate fully when **MMD** is investigating any claim relating to such complaint; and

17.2.1.5. put into place and maintain appropriate technical and organisational measures against unauthorised access, loss, destruction, misuse,

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- modification, disclosure or damage to **MMD** Personal Information;
- 17.2.1.6. take all necessary steps to ensure that its Processing of **MMD's** Personal Information will be fair and lawful and, for this purpose, **MMD** may reasonably enquire of the **Customer** as to the manner in which the **Customer** obtained **MMD's** Personal Information; and
- 17.2.1.7. if requested by **MMD** to do so, execute additional European Union model contracts for the transfer of Personal Information:
- (i.) with **MMD** or any other entity identified by **MMD**; or
 - (ii.) with any of the **Customer's** Related Bodies Corporate.

17.3 Personal Data Security and Personal Data Breach Notification

- 17.3.1 The **Customer** must put into place and maintain appropriate technical and organisational measures to secure Company Personal Information, having regard to the risk of accidental and unauthorised access, loss, destruction, misuse, modification, disclosure or damage to Company Personal Information.
- 17.3.2 If the **Customer** has knowledge of any:
- 17.3.2.1 accidental loss or destruction of, unauthorised disclosure of or access to Company Personal Information; or
 - 17.3.2.2 data security breach of its or its approved Sub-contractor's systems that are used in the provision of the Associated Services which may have an impact upon the security of Company Personal Information.
- 17.3.3 The **Customer** must:
- 17.3.3.2 expeditiously report such unauthorised disclosure or access to **MMD**;
 - 17.3.3.3 mitigate, to the extent practicable, any harmful effect of such disclosure or access that is known to the **Customer** or its approved sub-contractors;
 - 17.3.3.4 cooperate with **MMD** in providing any notices to individuals regarding accidental or unauthorised disclosures, as directed by **MMD**; and cooperate with any investigation into the incident that is subsequently undertaken by any data privacy authority, in consultation with **MMD**.

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17.4 The Customer indemnity

- 17.4.1 The **Customer** indemnifies **MMD** and must keep **MMD** indemnified in respect of all Liabilities incurred by or awarded against **MMD** relating to any breach by the **Customer** of its obligations under this clause 17.

17.5 Survival of Clause

- 17.5.1 The **Customer** must, on termination of these Terms or any Transaction, return, destroy, store or dispose of **MMD** Personal Information as directed by **MMD**.
- 17.5.2 This clause 17, including clause 17.5, will survive the termination of the Contract.

18. Illegal Information Brokering

18.1. Prohibition

- 18.1.1. The **Customer** recognises that the practice of Illegal Information Brokering or any other corruption of any Transaction award process is not permitted by **MMD** and the **Customer** represents and warrants that it has not and will not utilise Illegal Information Brokering in connection with these Terms and any Transaction.

19. Business Standard

19.1. Corruption, Bribery & Money Laundering

- 19.1.1. The **Customer** warrants that:
- 19.1.1.1. it complies with all anti-bribery, anti-corruption and anti-money laundering laws, regulations and/or policies of the United Kingdom of Great Britain and Northern Ireland ("**UK**"), Canada, European Union ("**EU**"), the United States of America ("**USA**"), Australia, Isle of Man, Organisation for Economic Co-operation and Development ("**OECD**") and the United Nations ("**UN**") to which **MMD** and/or any of its shareholders and/or any of **MMD**'s shareholders conducts business (such laws, regulations and/or policies are hereinafter collectively referred to as the "**International Anti-Bribery Laws**");
- 19.1.1.2. it complies with all laws, regulations and policies relating to economic or trade sanctions or export controls of the UK, Canada, EU, USA, Australia, Isle

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of Man, OECD and the UN to which **MMD** and/or any of **MMD's** shareholders is or are **MMD's** Employer's shareholders conducts business (such laws, regulations and/or policies are hereinafter collectively referred to as the "**Sanctions Laws**");

19.1.1.3. it has adequate anti-corruption compliance programmes, policies and procedures ("**Anti-Corruption Programme**") in place to enable compliance with all anti-bribery, anti-corruption and anti-money laundering laws, regulations and/or policies as well as economic or trade sanctions or export control related laws, regulations and/or policies to which it is subject, including but not limited to the provisions of the Corruption of Foreign Public Officials Act of Canada, United Kingdom Bribery Act 2010, the U.S. Foreign Corrupt Practices Act, the US OFAC Regulations, the US Export Administration Regulations, the Australian Criminal Code Act 1195 and the Isle of Man Bribery Act 2013 (collectively, the "**Anti-Bribery and Sanctions Legislation**");

19.1.1.4. neither it nor any of its employees or any other person on its behalf has ever been subject to any economic or trade sanctions or export controls imposed by any country; and

19.1.1.5. neither it nor any of its employees nor any other person on its behalf, has ever:

- (i.) engaged in any corrupt activities; or
- (ii.) directly or indirectly paid, given or offered to pay or give any money, gift or anything else of value to attempt to influence any act or decision (including a decision not to act) of any person, including but not limited to:
 - a government official, governmental employee; or
 - any official or employee of an entity in which any government holds a substantial ownership interest; or
 - any official or employee of a public international organisation (i.e. the UN, World Bank Group, EU, OECD etc.); or
 - any political party or political party official; or

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- candidate for political office, in his/her official capacity or to induce an official to use his/her influence to affect a decision so as to assist anyone in obtaining or retaining business or directing business to any person/entity or to secure any improper advantage.

19.2. Receipt of benefits

19.2.1. A director or any Personnel of the **Customer** must not:

- (i.) give or receive any commission, benefit, fee, rebate, gift or entertainment, whether of significant value or not from; or
- (ii.) enter into any business agreement with, any director or Personnel of **MMD** other than as a representative of the **Customer** or in the ordinary and proper course of business between any of those Parties.

19.3. Compliance with Anti-Corruption requirements

19.3.1. The **Customer** must (and must ensure that the **Customer's** Personnel), when performing its obligations under this Contract, comply with:

19.3.1.1. all applicable Anti-Corruption Laws; and

19.3.1.2. any business integrity policy, standard and/or practice of **MMD** provided by **MMD** to the **Customer**.

19.3.2. The **Customer** must ensure that its subcontracts and/or supplier agreements include obligations on the relevant subcontractors that are equivalent to the obligations in clause 19.

19.4. Dealings with Public Officials

19.4.1. Without limiting clause 19.3, the **Customer** must not receive or offer, pay or promise to pay, give or promise to give, either directly or indirectly, anything of value to:

19.4.1.1. a Public Official;

19.4.1.2. any person with the knowledge or being aware of a high probability, that all or a portion of such money or thing of value will be unlawfully offered, given or

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promised, directly or indirectly, to any Public Official, in connection with any aspect of the **Customer's** obligations under these Terms or any Transaction, for the purpose of:

- (i.) influencing any act or decision of such Public Official in their official capacity;
- (ii.) inducing such Public Official to do or omit to do any act in violation of their lawful duty;
- (iii.) inducing such Public Official to do or omit to do any act in violation of their lawful duty;
- (iv.) securing any improper advantage;
- (v.) inducing such Public Official to influence any act or decisions of any entity or enterprise owned or controlled by government or any ministry, department, court, tribunal, competition authority, commission, board, agency, institution or similar entity of such government;
- (vi.) assisting the **Customer** in obtaining or retaining business for or with, or directing business to the **Customer**.

19.4.2. For the purposes of clause 19.4, a '**Public Official**' is:

- 19.4.2.1. official or employee of government or any ministry, department, court, tribunal, competition authority, commission, board, agency, institution or similar entity of such government or government-owned or controlled entity;
- 19.4.2.2. any person performing a public function;
- 19.4.2.3. any official or employee of a public international organisation such as the World Bank;
- 19.4.2.4. any candidate for political office; or
- 19.4.2.5. any political party or an official of a political party.

19.5. Provision of information regarding corruption

19.5.1. The **Customer** must immediately notify and provide full particulars to **MMD** upon becoming aware:

- 19.5.1.1. that it has breached clause 19;

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- 19.5.1.2. of any conduct which may give rise to a breach of clause 19;
- 19.5.1.3. that it has been found guilty by a court of, or has admitted guilt or accepted liability in relation to, a contravention of any Anti-Corruption Law.

19.6. Response to breaches

19.6.1. If the **Customer** gives notice under clause 19.5 or **MMD** otherwise becomes aware or has a reasonable suspicion of any breach of clause 19 or any conduct which may give rise to a breach of these provisions ('Misconduct'), **MMD** may in its absolute discretion:

19.6.1.1. request the **Customer** to provide all information that **MMD** reasonably requires in relation to the alleged Misconduct; and/or

19.6.1.2. request the **Customer** to assist **MMD** with any investigation that **MMD** wishes to conduct into the alleged Misconduct; and/or

19.6.1.3. request the **Customer** to:

- (i.) prepare, document and implement a corrective action plan to address any failure to comply or to mitigate the risk, damage and potential damage arising from the Misconduct, including:
- (ii.) the termination of any relationship between the **Customer** and its Personnel involved in the Misconduct;
- (iii.) procuring Personnel from the **Customer** to prepare, document and implement corrective action plans; and
- (iv.) confirm to **MMD** in writing that such measure have been implemented; and/or
- (v.) suspend the supply of the MMD Equipment at the **Customer's** expense until **MMD** has completed its investigation into the matter; and/or
- (vi.) propose to the **Customer** any revised terms under which **MMD** is prepared to continue the performance of any Transaction and if those terms are not agreed by the Parties within the time specified in **MMD's** proposal, terminate any Transaction by giving 5 (FIVE) days' written notice to the **Customer**.

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19.7. Consequence of breach

19.7.1. Notwithstanding the provisions of clause 19, if the **Customer** or its Personnel breach clause 19 then, without limitation to any other right or remedy available to **MMD**, **MMD** may terminate any Transaction with immediate effect without liability for any losses suffered by the **Customer** or its Personnel.

19.8. Conflict of interest

19.8.1. The **Customer** represents that there is no relationship between it and **MMD**, between any of the **Customer's** directors or Personnel and **MMD**, or between the **Customer** and a director or Personnel member of **MMD** that gives rise to an actual or potential conflict of interest.

19.8.2. The **Customer** must immediately notify **MMD** upon becoming aware that any such relationship exists.

19.8.3. The **Customer** must take reasonable steps to eliminate or overcome the conflict of interest without in any way adversely affecting its continued performance of its obligations under any Transaction.

20. Trade and Economic Sanctions**20.1. Definitions**

20.1.1. For purposes of this clause 20:

20.1.1.1. '**Country Based Sanction**' means any program that prohibits and/or restricts:

- (i.) Trade with or investment in, or the transfer of property or assets to or from a specified country, including its government, government subdivisions, agencies and other entities under the control or acting on behalf of government; or
- (ii.) Engaging in transactions that relate to investing in and/or provision of advice or assistance in relation to a specified country which, in each case, are maintained, amended and imposed by any Sanction Authority.

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- 20.1.1.2. **‘Sanction’** means an SDN Sanction, a Country Based Sanction and any other similar sanctions, regulations, statutes, prohibitions and official embargo measures that relate to the enforcement of economic and trade sanctions which are maintained, amended and imposed by any Sanction Authority.
- 20.1.1.3. **‘Sanction Authority’** means the United Nations, the European Union, Her Majesty’s Treasury in the United Kingdom, the United States Department of Treasury’s Office of Foreign Assets Control, the Commonwealth of Australia, Switzerland, the Republic of South Africa, Canada or any replacement or other regulatory body enforcing economic and trade sanctions legislation in such countries or by any state, supranational or international government organisation.
- 20.1.1.4. **‘Sanctioned Person’** means any person, being an individual, corporation, company, association, government or other entity who:
- (i.) is the subject target of a Sanction or in respect of which a Sanction has been imposed or targeted; or
 - (ii.) is owned, operated or controlled by any person who is the subject or target of a Sanction or in respect of which a Sanction has been imposed by any Sanction Authority.
- 20.1.1.5. **‘SDN Sanction’** means any Specially Designated Nationals or Blocked Persons lists and/or any replacement lists which are maintained, amended and imposed by any Sanction Authority.

20.2. Warranty

- 20.2.1. The **Customer** warrants that:
- 20.2.1.1. to the best of its knowledge, information and belief neither it, nor any of its Personnel or related corporate entities (including the Personnel of such related corporate entities) (together with the **Customer**, the **‘the Customer Group’**) is a Sanctioned Person; and
- 20.2.1.2. it has provided all information of which it is aware, that **MMD** reasonably requires in order for **MMD** to:

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- (i.) manage the risk of Sanctions being imposed on **MMD**; and
- (ii.) comply with laws or regulations applying in the jurisdictions in which the MMD Equipment is provided, the Parties are located or in any other country.

20.3. Provision of information regarding status

20.3.1. The **Customer** must:

20.3.1.1. immediately notify **MMD** upon becoming aware that it or any member of the **Customer** Group has:

- (i.) become or is reasonably likely to become a Sanctioned Person; or
- (ii.) violated a Sanction;

20.3.1.2. provide all information that **MMD** reasonably requires from time to time in order for **MMD** to:

- (i.) determine whether any member of the **Customer** Group has become or is reasonably likely to become a Sanctioned Person;
- (ii.) comply with any request by a regulatory authority that oversees Sanctions;
- (iii.) manage the risk of Sanctions being imposed on **MMD**; and
- (iv.) comply with laws or regulations applying in the jurisdictions in which the MMD Equipment is being provided, the Parties are located or in any other country.

20.4. Suspension by MMD

20.4.1. If **MMD** suspects that any member of the **Customer** Group has become a Sanctioned Person or has violated any Sanction then (without limitation to any other right or remedy available to **MMD**), **MMD** may:

20.4.1.1. suspend performance of; or

20.4.1.2. withhold any payment due and owing, under these Terms or any Transaction.

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20.5. Termination by MMD**20.5.1. If MMD:**

- 20.5.1.1. is notified by any Sanction Authority or the **Customer** that any member of the **Customer** Group has or is reasonably likely to become a Sanctioned Person;
or
- 20.5.1.2. has reasonable cause to believe that any member of the **Customer** Group is a Sanctioned Person which, if so, would result or be reasonably likely to result in:
- (i.) **MMD** and/or an affiliate of **MMD** becoming a Sanctioned Person; or
 - (ii.) the continued performance of the Contract being in violation of a Sanction, then (and without limitation to any other right or remedy available to **MMD**) **MMD** may terminate any Transaction with immediate effect without liability for any losses suffered by any member of the **Customer** Group.

21. Right to Audit

- 21.1. If **MMD** reasonably suspects that the **Customer** or its shareholders, members, directors, officials, employees, agents, consultants and/or representatives of the **Customer** have engaged in practices referred to in clauses 19 and 20 above:
- 21.1.1. the **Customer** will, upon request, permit **MMD** to audit and examine any books and financial records necessary to verify compliance with the **Customer's** warranties and undertakings under these Terms.
- 21.1.2. In order to establish such audit and examination, the **Customer** will keep and maintain accurate and reasonably detailed books and financial records in connection with its performance under, and payments made in connection with these Terms.
- 21.1.3. the **Customer** shall provide any information and assistance reasonably required by **MMD** to enable and facilitate any audit and examination under this clause 21.

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22. Assignment

- 22.1. **MMD** may assign or sub-contract a Transaction or any part of it to any person, firm or company.
- 22.2. The **Customer** shall not be entitled to assign or sub-contract a Transaction or any part of it without the prior written consent of **MMD**.

23. Arbitration

- 23.1. In cases of dispute the Parties shall do their best effort to reach an amicable settlement with respect of the interpretation, the implementation or the validity of a Transaction concerned within 30 (THIRTY) days following notification to the other Party setting out all details of the claim or dispute together with the provisional amount in dispute.
- 23.2. Should the Parties still fail to reach any agreement, such dispute shall be determined by arbitration in the London Court of International Arbitration (LCIA) to be held in London in accordance with the LCIA's rules.
- 23.3. A single arbitrator shall be appointed by agreement between the Parties or in the event that the Parties are unable to agree on an arbitrator within a period of 14 (fourteen) days after arbitration has been demanded, the nominee of the President of the Law Society of England and Wales shall be appointed as arbitrator, who in making his appointment shall have regard for the nature of the dispute.
- 23.4. If the question in dispute is:
- 23.4.1. primarily an accounting matter, an independent chartered accountant with a minimum of 10 (TEN) years experience;
- 23.4.2. primarily a legal matter, a suitable qualified legal person; and
- 23.4.3. any other matter, a suitable qualified professional person.

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- 23.5. The award of the arbitrator shall be final and binding upon all the Parties to the dispute (who hereby agree to carry out the award) unless any Party has reasonable belief that legal grounds exist for the taking on review of the award of the arbitrator. If any Party holds such a reasonable belief that legal grounds exist for the taking on review the award of the arbitrator, that Party will have 7 (SEVEN) days after finalisation of the determination within which to notify the other Party of its intention to take the award on review. Any review proceedings must be commenced within 30 (THIRTY) days of giving such notice. Subject to the foregoing, the Parties hereby exclude all rights of review or appeal, which might otherwise be conferred on them by law.
- 23.6. Notwithstanding any such difference or question or matter or thing or reference to arbitration, the Parties shall proceed with their obligations in terms of this Agreement unless both Parties agree to the suspension or cancellation thereof in writing.
- 23.7. The aforesaid shall not prejudice the Parties' rights to approach any court for legal relief should the circumstances warrant such action.

24. Law Applicable

- 24.1. These Terms and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 24.2. Each Party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms or its subject matter or formation (including non-contractual disputes or claims).
- 24.3. In the event of any action being instituted by any of the Parties successfully against the other Party, then the unsuccessful Party agrees to pay all reasonable legal costs incurred by successful Party on a full indemnity basis and all other ancillary costs or expenses relating to such action.
- 24.4. The United Nations Convention on Contracts for the International Sale of Goods and the Contracts (Rights of Third Parties) Act of 1999 and similar legislation and conventions shall not apply to these Terms or Transaction.

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25. Force Majeure

25.1. **MMD** shall not be liable for the non-performance of any of its obligations hereunder, including any delay or failure to deliver, in the event and to the extent that such non-performance is the direct result of Force Majeure. Performance shall be suspended for the duration of the Force Majeure event and extended by a reasonable period. If the event continues for more than 90 (NINETY) days, either Party may terminate the Contract, with the **Customer** paying for all **MMD** Equipment delivered or work performed up to the date of termination.

26. Authority

26.1. The persons signing these Terms or any other documents for and/or on behalf of **MMD** and the **Customer** expressly warrant their authority to do so.

27. Severability

27.1. In the event that any of the provisions of these Terms are found to be invalid, unlawful, or unenforceable such terms shall be severable from the remaining Terms, which shall continue to be valid and enforceable.

27.2. Notwithstanding the foregoing, the Parties shall thereupon negotiate in good faith to agree the terms of a mutually satisfactory provision to be substituted for the provision found to be void or unenforceable, but failure to agree on any new provision will not give the **Customer** the right to cancel any order placed by it.

28. Domicilia and Notices

28.1. The Parties choose as their *domicilia citandi et executandi* under these Terms the addresses mentioned in clause 28.1.1 and 28.1.2 below:

28.1.1. **MMD** – the main place of business of the **MMD** Entity that concluded the Transaction.

28.1.2. The **Customer** – the main place of business of the **Customer** or any other address reflected on any order, correspondence or document of the **Customer**.

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- 28.2. Either Party may change their *domicilium*/service address by delivery of a written notice to that effect to the service address of the other Party. The change will be effective from the date of delivery.
- 28.3. Any notice to be given by either Party to the other Party in terms of these Terms may be given by pre-paid registered post or delivered by hand. Notices by e-mail are permitted for operational purposes, but not for amendments or waivers.
- 28.4. Any notice delivered by hand during normal business hours will be deemed to have been received by the addressee on the date of delivery.
- 28.5. Notices given by prepaid registered post will be deemed to be delivered 4 (TEN) days after the date of posting, excluding Saturdays, Sundays and public and bank holidays in the United Kingdom, and calculated exclusive of the first day, but inclusive of the last day.
- 28.6. Notwithstanding anything to the contrary contained in the agreement between the Parties, no agreement between **MMD** and the **Customer** may be amended or cancelled by e-mail. Any amendment or cancellation must be reduced to print and physically signed by the appointed representative of the Parties or done through DocuSign.

29. Whole Agreement

- 29.1. These Terms constitute the whole agreement between the Parties relating to any Transaction.
- 29.2. Save as set out in these Terms, no amendment or consensual cancellation of any Transaction or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of any Transaction and no settlement of any disputes arising under any Transaction and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of any Transaction or of any agreement, bill of exchange or other document issued pursuant to or in terms of any Transaction shall be binding unless recorded in a written document signed by the Parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 29.3. No extension of time or waiver or relaxation of any of the provisions or terms of these Terms or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of these Terms, shall operate as an estoppel against any Party in respect of its rights

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under these Terms, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with these Terms.

29.4. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

29.5. Only directors of **MMD** or persons appointed in writing by **MMD** in writing shall have the authority to alter, modify or waive any provision of these Terms. No agent, employee or representative, save as set out before, of **MMD** has the authority to alter, modify or waive any provision of these Terms.

29.6. These Terms can only be amended in writing and such amendment, to be effective, must be signed by both **MMD** and the **Customer** in writing. No amendment or cancellation of these Terms may be made by e-mail.

----- END OF AGREEMENT -----

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