

# KELVIN HUGHES TERMS & CONDITIONS OF SALE

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## 1 GENERAL

- 1.1 Every contract of sale between Kelvin Hughes Limited whose principal place of business is located at Voltage, Mollison Avenue, Enfield EN3 7XQ, United Kingdom ("the Seller") and persons contracting with the Seller ("the Buyer"), whether by direct order or by acceptance of a quotation, and every contract to install or service Supplies by the Seller is subject to these terms and conditions.
- 1.2 All other conditions and terms whether implied by statute, common law or trade usage or expressed by the Buyer are hereby excluded with the exception of conditions expressly accepted by the Seller in writing and conditions and other terms the exclusion of which is prohibited by law.
- 1.3 Any variation of these terms and conditions shall not be binding on the parties unless set out in writing, expressed to vary these terms and conditions, and signed by authorised representatives of each of the parties.
- 1.4 The provisions contained in each clause and sub-clause of these terms and conditions shall be enforceable independently of each of the others and their validity shall not be affected if any of the others are invalid.
- 1.5 These terms and conditions prevail should they conflict with any INCOTERMS or similar terms. Subject thereto, references to 'EX WORKS' are to the corresponding INCOTERM 2010.
- 1.6 The Seller is committed to conducting its business ethically and lawfully. To that end the Seller maintains a Code of Corporate Responsibility and Business Ethics <https://www.kelvinhughes.com/upload/pdf/quality/corporate-ethics.pdf> and mechanisms for reporting unethical or unlawful conduct. The Buyer shall conduct its business ethically and lawfully and in accordance with the provisions of the UK Bribery Act 2010, and any similar international legislation.

## 2 DEFINITIONS

In these terms and conditions:

Defective means, in relation to Supplies supplied by the Seller, that they do not function materially in accordance with their specification due to a fault in design, material or workmanship or due to a material discrepancy from the contract description, but Supplies are not defective if a malfunction is due to anomalies or changes in transmissions from land or satellite stations however caused;

Intellectual Property Rights means (i) copyright, patents, database rights and rights in trade marks, designs, know-how and confidential information (whether registered or unregistered); (ii) applications for registration, and the right to apply for registration, for any of these rights; and (iii) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;

Proprietary Items include, but are not limited to, any magnetron or microwave device, cathode ray tube, TFT screen (inclusive of back lighting), Liquid Crystal Display, Daylight and Thermal Imaging equipment, batteries or similar item included in the Supplies supplied by the Seller but not manufactured or produced by the Seller;

Proprietary Software Materials means the software, if any, that accompanies the Supplies supplied under these terms and conditions and licensed under a separate licence agreement;

Service Work means (i) the undertaking of survey, installation, maintenance or repair work, in respect of any Supplies ; and (ii) provision of product-related training;

Supplies means (i) provision of equipment to aid the safe navigation and operation of the vessel, which may include, but not be limited to, radar, chart display, compass, autopilot, communications, data recording and playback equipment (some or all such equipment may comprise both hardware and software content); (ii) provision of equipment to provide for the detection, identification and tracking of targets of interest, which may include, but not be limited to, radar, electro-optic visual imaging, tracking and command and control software; (iii) provision of equipment and software relating to communication systems which may include, but not be limited to forms of terrestrial and satellite communications; (iv) provision of associated installation, commissioning and maintenance data (in hard copy or electronic formats); (v) provision of associated installation materials and spare parts; and/or (vi) provision of software products to be supplied by the Seller to the Buyer;

VAT means value-added tax chargeable under or pursuant to VATA 1994 or the EC Council Directive 2006/112/EC as amended, or any similar sales, purchase or turnover tax chargeable outside the European Union;

VATA 1994 means the Value Added Tax Act 1994.

Warranty Period has the meaning given to it, as appropriate, in clauses 13.7, 13.8 and 13.9.

### 3 THIRD PARTY IPR INDEMNITY

- 3.1 Subject to clause 3.2, the Seller shall indemnify the Buyer in respect of the losses, damages, costs, expenses and other liabilities (including, without limitation, reasonable legal fees) incurred by or finally awarded against the Buyer in connection with a claim by a third party that the use or possession by the Buyer of the Supplies supplied under these terms and conditions by the Buyer infringes any valid United Kingdom patent of that third party ("IPR Claim").
- 3.2 The Buyer agrees that this indemnity shall not apply:
- (a) if the infringement is caused by the Seller following a design furnished by the Buyer or on its behalf; or
  - (b) if the infringement is caused by the use or sale of the Supplies in combination with other Supplies; or
  - (c) if the relevant use or sale of the Supplies would not have constituted infringement at the date of their delivery by the Seller; or
  - (d) if the Buyer is under an obligation which prevents it from contesting the validity or scope of any relevant patent; or
  - (e) if the Buyer has used the Supplies other than in accordance with these terms and conditions; or
  - (f) if the Buyer has used the Supplies other than in accordance with their specification.
- 3.3 The Buyer agrees that:
- (a) it shall notify the Seller in writing as soon as reasonably practicable of any IPR Claim;
  - (b) the Seller shall, at its request and own expense, be entitled to have the conduct of and/or settle all negotiations and litigation arising from any IPR Claim and the Buyer shall, at the Seller's request and expense, give the Seller all reasonable assistance in connection with those negotiations and litigation; and
  - (c) once the Seller has assumed conduct of the IPR Claim, the Buyer shall not admit any liability or agree to any settlement or compromise of an IPR Claim without the prior written consent of the Seller, which shall not be unreasonably withheld or delayed.

### 4 DELIVERY TIME

- 4.1 Dates given for delivery are approximate only and the Seller shall not be liable for any loss or damage resulting from delay unless the delay:
- (a) is of an unreasonable length; and
  - (b) is caused by circumstances other than those mentioned in clause 13.
- 4.2 Subject to clause 11.2, the Seller's liability under this clause 4 shall be limited to the value of the Supplies that are delivered late.

### 5 PLACE OF DELIVERY

- 5.1 Unless otherwise expressly agreed by the Seller in writing, delivery is deemed to take place and the risk thereupon passes to the Buyer upon exiting the Seller's works, notwithstanding that the Seller may undertake to install the Supplies.
- 5.2 Ownership of the Supplies shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Supplies; and
  - (b) all other sums which are or which become due to the Seller from the Buyer on any account.
- 5.3 Until ownership of the Supplies has passed to the Buyer, the Buyer shall:
- (a) hold the Supplies on a fiduciary basis as the Seller's bailee;
  - (b) store the Supplies (at no cost to the Seller) separately from all other Supplies of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Supplies; and
  - (d) maintain the Supplies in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller.
- 5.4 The Buyer may resell the Supplies before ownership has passed to it solely on the following conditions:

- (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- (b) any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

5.5 The Buyer's right to possession of the Supplies shall terminate immediately if:

- (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his 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 purpose 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 Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- (c) the Buyer encumbers or in any way charges any of the Supplies.

5.6 The Seller shall be entitled to recover payment for the Supplies notwithstanding that ownership of any of the Supplies has not passed from the Seller.

5.7 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Supplies are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

5.8 Where the Seller is unable to determine whether any Supplies are the Supplies in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all Supplies of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.

5.9 On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this condition 5 shall remain in effect.

5.10 Without prejudice to clause 5.1, by separate agreement not being part of these terms and conditions, the Seller shall on request procure carriage or freight and insurance on the Buyer's behalf at the Buyer's expense.

## 6 LOSS OR DAMAGE IN TRANSIT

Without prejudice to the provisions of clause 5 and subject to clause 11, the Seller shall not in any case be liable for loss or damage to Supplies in transit unless:

- (a) such loss or damage is caused by the Seller's negligence; and
- (b) the carriers and the Seller are notified thereof in writing, in the case of damage or shortage, within three days of delivery or, in the case of non-delivery, within a reasonable time after the date upon which the Supplies would have been delivered in the normal course of events; and
- (c) in the case of damage to Supplies, those Supplies are returned to the Seller, carriage paid, for inspection within seven days of delivery.

## 7 INTELLECTUAL PROPERTY RIGHTS

7.1 The Buyer acknowledges that all Intellectual Property Rights in the Supplies sold under these terms and conditions and any associated documentation (and any modifications thereof) are, as between the Buyer and the Seller, vested, and shall remain vested, in the Seller. The Buyer undertakes to execute any deeds and documents and do anything the Seller may require to vest all such Intellectual Property Rights in the Seller or its nominees.

7.2 The Buyer may not use the Intellectual Property Rights in the Supplies supplied for any purpose other than that which is contemplated under these terms and conditions.

7.3 The Buyer acknowledges that all tools, drawings and specifications involved in the manufacture of the Supplies shall, as between the Buyer and the Seller, remain the property of the Seller unless otherwise specifically agreed in writing.

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- 7.4 Any licence that the Seller may grant to the Buyer to use any Proprietary Software Materials shall not be governed by these terms and conditions.
- 7.5 The Buyer shall not any time without the Seller's previous written consent:
- (a) exhibit any Supplies sold by the Seller at any exhibition
  - (b) take part in or assist at or support or be concerned in any such exhibition of such Supplies or any competition, or competitive trials of or relating to such Supplies; or
  - (c) publish or distribute or cause or assist in the publication or distribution of any literature relating to any such exhibition of such Supplies or competitive trials or the result thereof.

### 8 CHANGES

- 8.1 If, after the receipt of an order for Supplies and before their delivery, improvements are made in their design, the Seller may, on giving notice to the Buyer, incorporate such improvements in those Supplies sold, provided that:
- (a) the performance and quality of the altered Supplies are at least as high as those of the Supplies ordered; and
  - (b) no price variation is made except with the Buyer's consent; and
  - (c) delivery is not unreasonably delayed.
- 8.2 If, after the receipt of an order for Supplies and/or Service Work and before their delivery, the Buyer gives notice to the Seller of a change in the scope of the order, the Seller may accommodate such changes, subject to the following:
- (a) where the changes affect the specification of the Supplies or Service Work ordered, and are not deemed material by the Seller, it shall accept the changes and notify the Buyer of any consequential changes to the price and delivery dates as soon as practicable after receipt of the Buyer's notification;
  - (b) where the changes delay the delivery schedule set out in the order, the Seller shall accept, without charge, one variation of up to one month's duration. If the delay extends beyond one month from the originally agreed date, the Seller shall reserve the right to invoice and deliver, either to the notified consignee address or on a self-to-self basis, one month after the originally agreed date. Where delivery is made self-to-self, the Seller shall store the Supplies, at the Buyer's risk, for up to one month, free of charge. Thereafter, storage fees will be charged and must be settled before release of the subject Supplies. The provisions of clause 10 below will apply to any invoice issued pursuant to this clause;
  - (c) where the Buyer is required to obtain/provide any necessary paperwork or authorisation, including but not limited to: letters of credit, bills of exchange, end-user certification, drawing approval, consignee details, in accordance with an agreed schedule, any failure to meet such agreed dates shall:
    - (i) automatically extend the scheduled delivery date, by at least a corresponding period (the actual delay to be notified to the Buyer as soon as practicable after the deficiency has been rectified); and
    - (ii) if the delay extends beyond one month from the originally agreed delivery date, the relevant provisions of sub-clause 9.2 (b) above will be applied; and
  - (d) where any changes are deemed material, the Seller reserves the right to apply a cancellation charge, which will be calculated on a case-by-case basis. Such a cancellation charge will be calculated on the basis of an assessment of:
    - (i) the work done, up to the point of cancellation, by the Seller, its suppliers and contractors;
    - (ii) the costs of materials purchased for the contract; and
    - (iii) the cancellation costs charged to the Seller by its suppliers and contractors and any administrative costs in closing and cancelling the contract, including any associated financing costs.

### 9 PRICES AND PAYMENT

- 9.1 Any quotation or offer made by the Seller in respect of the Seller's Supplies will remain valid for a period of 30 days only, unless otherwise expressly agreed in writing.
- 9.2 Prices quoted will be based upon the exchange rates prevailing, at the date of quotation. The Seller reserves the right to adjust prices, to reflect any adverse currency movements between the date of quotation and the date of shipment.
- 9.3 If, after the date of contract and before the date of delivery or installation, the Seller's production costs are increased, then the prices payable by the Buyer may also be increased.

- 9.4 Unless otherwise indicated the prices quoted are EX WORKS the Seller's premises, exclusive of VAT (if any), transit packing materials, installation, carriage, insurance and additional labour. Any VAT due will be paid by the Buyer in addition to the price quoted.
- 9.5 The Buyer shall make all payments in Pound Sterling, or such other currency as the parties may agree in writing, on or before the due date in immediately available funds without set-off or counterclaim and free and clear of all taxes, deductions, withholdings and other charges of whatever nature.
- 9.6 Unless subject to prior written agreement on credit terms, payment will be made:
- (a) for Supplies, against an agreed letter of credit.
  - (b) for Service Work, within 30 days from the date of invoice.
- 9.7 The Seller reserves the right to levy an interest charge in the event of failure to pay by the due date. Such charge will be at the rate of one per cent. per month (or any part thereof) on the overdue amount from the date that payment is payable until the date payment is made (both dates inclusive).

### 10 INSTALLATION AND SERVICING

Where the Seller undertakes installation, supervision of installation or maintenance or servicing of Supplies on the Buyer's premises or vessel or on a third party's premises or vessel, the Buyer shall indemnify the Seller on demand against all loss suffered by the Seller due to breach of any duty imposed (whether by statute order, regulation, bye-law or common law) upon the Seller as occupier of the premises or vessel, or upon persons employed on the premises or vessel in respect of:

- (a) the conditions of the premises or vessel;
- (b) the means of access to any place of work; or
- (c) the suitability and condition of any plant, equipment or appliance used on the premises or vessel and not provided by the Seller, provided that this indemnity shall not extend to liability directly resulting from the negligent act or default of any person employed by the Seller.

### 11 LIABILITY

- 11.1 Except as expressly provided in clauses 3 and 4 and subject to the provisions of clauses 4 and 11.2, the Seller shall not be liable to the Buyer for direct or indirect loss (including, but not limited to, any loss of profits for whatever reason) or damage to persons or property, howsoever arising from the sale, use, installation or servicing of the Supplies or any defect therein.
- 11.2 Nothing in these terms and conditions limits the Seller's liability for death or personal injury resulting from negligence or where the Seller is prevented by statute from excluding or restricting its liability.
- 11.3 The maximum aggregate liability of the Seller for any or all claims (other than claims relating to clause 11.2) under any resulting Contract shall be limited to the value of that Contract or one million pounds sterling, whichever is the lower amount.

### 12 FORCE MAJEURE

- 12.1 Subject to clause 12.3, neither of the parties shall be liable to the other for any delay or non-performance of its obligations under these terms and conditions arising from any cause or causes beyond its reasonable control including any of the following: act of God, governmental act, war, fire, flood, explosion, civil commotion or industrial dispute of a third party, armed hostilities, act of terrorism, revolution, blockade, embargo, strike, lock-out, sit-in, industrial or trade dispute, adverse weather, accident to (or breakdown of) plant or machinery, shortage of any material, labour, transport, electricity or other supply, or regulatory intervention including but not limited to prohibition of export or application of sanctions.
- 12.2 Subject to the party so delaying promptly notifying the other party in writing of the cause and the likely duration of the delay and provided that the party shall use reasonable endeavours to limit the effect of such event on the other party, the performance of the delaying party's obligations to the extent affected by the delay shall be suspended during the period that the cause persists, provided that if an agreement is not reached to extend the term for performance of the delaying party's obligations the non-delaying party may by written notice terminate any contract of sale to which these terms and conditions relate.
- 12.3 Nothing in this clause shall affect the Buyer's obligation to make payments under clause 9.

### 13 WARRANTY

- 13.1 The Seller warrants that, subject to clauses 13.2 to 13.9,
- I. it shall, without charge, repair or, at the Seller's option, replace any Supplies sold by the Seller to the Buyer which are Defective at the time of delivery or which become Defective before the expiry of the appropriate Warranty Period, provided that the Seller is promptly notified in writing that such Supplies are Defective; and
  - II. the Service Work shall be provided with reasonable care and skill.
- 13.2 No warranty shall be effective with respect to any Supplies that have not been installed and operated in accordance with the relevant published installation and/or operating specification. In the case of Supplies fitted to vessels, vehicles or installed in fixed locations the installation and commissioning shall be carried out or supervised by a technician approved by the Seller.
- 13.3 No warranty shall be effective with respect to any Supplies that have been:
- (a) subjected to conditions beyond the limits of the specified power supply voltage frequency, temperature and other environmental conditions stipulated by the Seller;
  - (b) physically damaged;
  - (c) attached to any apparatus other than apparatus supplied by the Seller for attachment or specifically approved for attachment by the Seller in writing; or
  - (d) found to be defective due to abuse, misuse, unauthorised repair or alteration, lightning or other electrical discharge.
- 13.4 All claims under this warranty shall be subject to the repair being carried out by a technician approved by the Seller, and subject to:
- (a) a detailed service report being submitted promptly to the Seller;
  - (b) the Buyer making the Supplies available for inspection and testing by or on behalf of the Seller;
  - (c) the repair work being carried out in accordance with best trade practices;
  - (d) the Seller being satisfied that the fault was caused by the Supplies being Defective.
- 13.5 In the case of Supplies fitted to merchant marine or naval vessels only, all diagnosis and repair of any defect covered by this warranty may be carried out at the next port of call and:
- (a) in the event that a Seller depot or approved service agent is situated within 100 km (62 miles) of that port, at no charge, (excluding boat/helicopter hire or any other transit costs); or
  - (b) in all other cases, shall be subject to payment of any necessary travelling and subsistence expenses incurred by the Seller.
- 13.6 In the case of Supplies fitted to fixed installations, all diagnosis and repairs of any defect covered by the warranty shall be subject to the Buyer returning the defective Supplies, at its own cost, to the Seller's site in accordance with the Return Materials Authorisation Procedure.
- 13.7 Subject to clause 13.8, the Warranty Period:
- 13.7.1 In respect of Supplies, shall be 12 months from the date of despatch from the Seller.
- 13.7.2 In respect of spare parts for Supplies, excluding Proprietary Items, shall be six months after the date of installation or shipment of such spare parts, whichever period shall expire first.
- 13.8 Limits of Warranty Period
- (a) The Warranty Period in respect of Proprietary Items shall be limited to the period specified by the respective manufacturers thereof; and
  - (b) In the case of all Supplies sold but not manufactured or produced by the Seller, its subsidiaries or affiliates, the Seller's sole obligation shall be to extend to the Buyer the manufacturer's warranty, provided that the Buyer shall, where it is permitted to do so, comply with all the applicable conditions of such warranty.
- 13.9 Except as expressly provided in these terms and conditions, no representation, warranty or condition, express or implied, statutory or otherwise, is given by the Seller and all such representations, warranties and conditions are excluded except to the extent that their exclusion is prohibited by law.

#### 14 SUPPLIES STORED

Where, at the Buyer's request, Supplies are held in storage, the amount due for those Supplies shall be invoiced on the date when they would otherwise have been delivered and the Seller accepts no liability for such Supplies after the date of invoice. Storage fees will be charged for Supplies held for more than one calendar month after such date.

#### 15 RETURNS

The Seller will not accept, or take responsibility for, goods returned by the Buyer which have not been returned in accordance with the Returns Procedures operated by the supplying operation, within the Seller's business, details of which have been separately notified, and are available on the Seller's website, or by request.

#### 16 LICENCES, PERMITS AND PERMISSIONS

- 16.1 To the extent that delivery of the Supplies and services may be subject to requirements to obtain licences, permits and permissions, the Buyer undertakes to obtain any such licences, permits and permissions, applicable to the import, installation and operation of the supplies, and to provide all necessary assistance, at his own cost and expense, to the Seller, in respect of any export or transit licence, permits and permissions.
- 16.2 The Seller shall not be liable for any delay or failure to obtain any such necessary licences, permits or permissions as a result of any act or omission of the Buyer.

#### 17 CONSUMER SALES

If the sale of the Supplies to the Buyer is a consumer transaction then nothing in these terms and conditions shall affect the Buyer's statutory rights.

#### 18 THIRD PARTY RIGHTS

Except as expressly stated in these terms and conditions, a person who is not a party to these terms and conditions may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

#### 19 TERMINATION

- 19.1 The Seller may terminate this Agreement at any time by giving notice in writing to the Buyer if:
  - 19.1.1 the Buyer commits a material breach of this Agreement (for the avoidance of doubt, breach of clause 1.6 shall be deemed material for the purposes of this clause);
  - 19.1.2 the Buyer has failed to pay any amount due under this Contract on the due date and such amount remains unpaid within 14 calendar days after the Buyer has received notification that the payment is overdue;
  - 19.1.3 any consent, licence or authorisation held by the Seller is revoked or modified such that the Seller is no longer able to comply with its obligations under this Contract or receive any benefit to which it is entitled;
  - 19.1.4 the Seller stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
  - 19.1.5 the Buyer is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Seller reasonably believes that to be the case;
  - 19.1.6 the Buyer becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
  - 19.1.7 the Buyer has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - 19.1.8 the Buyer has a resolution passed for its winding up;
  - 19.1.9 the Buyer has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
  - 19.1.10 the Buyer is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within 7 calendar days of that procedure being commenced;
  - 19.1.11 the Buyer has a freezing order made against it;
  - 19.1.12 the Buyer is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items; or

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- 19.1.13 the Buyer is subject to any events or circumstances analogous to those in clauses 19.1.4 to 19.1.12 in any jurisdiction;
- 19.2 Termination or expiry of this Agreement will not affect any accrued rights and liabilities of either party at any time up to the date of termination.

### **20 LAW AND JURISDICTION**

- 20.1 The construction, validity and performance of these terms and conditions and matters pertaining thereto shall be governed in all respects by English law.
- 20.2 The English courts shall have exclusive jurisdiction to settle any action brought in connection with these terms and conditions or matters pertaining thereto and the parties submit to the exclusive jurisdiction of the English courts.

Kelvin Hughes August 2016