# CHELTON LIMITED
# TERMS AND CONDITIONS FOR THE SALE OF GOODS AND SUPPLY OF SERVICES

**In these terms:**

I. Chelton Limited (a company registered in England & Wales under registration number 00896823) shall be known as "Supplier"; and

II. any customer of Chelton Limited purchasing Goods or Services as defined hereinafter shall be known as "Buyer"

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## PART A - GENERAL

### 1. Formation

1.1 Subject to any variation permitted under the Contract, the Contract will be upon these Terms and Conditions to the exclusion of all other terms and conditions, including any terms or conditions which Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.

1.2 Each order or acceptance of a quotation for Works will be deemed to be an offer by Buyer to purchase Works upon these Terms and Conditions. The Contract is formed when the order is accepted by Supplier, by way of a written acknowledgement of order. No contract will come into existence until a written acknowledgement of the order is issued by Supplier.

1.3 Any quotation is valid for a period of thirty days only from its date (or such other period if specified in such quotation), provided Supplier has not previously withdrawn it, but no Contract shall be created by acceptance of such quotation. A Contract will be created on acknowledgement of order by Supplier as set out in **clause 1.2**.

1.4 Buyer must ensure that the terms of its order are complete and accurate.

1.5 Acceptance of delivery of the Goods or commencement of the performance of the Services will be deemed conclusive evidence of Buyer's acceptance of these Terms and Conditions, even in cases where there has been no acknowledgement of order by Supplier in terms of **clause 1.2**.

1.6 Save as set out in the Contract, these Terms and Conditions may not be varied or amended except in writing and signed by a duly authorised officer of each Party. The Parties agree that if the Contract is transmitted electronically neither party shall contest the validity of the Contract, on the basis that this Contract contains an electronic signature.

### 2. Miscellaneous

2.1 Performance by Supplier of its obligations is dependent upon prompt performance by Buyer of its obligations under the Contract.

2.2 Each right or remedy of Supplier under any Contract is without prejudice to any other right or remedy of Supplier under this or any other Contract.

2.3 If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective without, as far as is possible, modifying any other provision of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect. The Parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the illegal, invalid or unenforceable provision which as nearly as possible gives effect to their intentions as expressed in the Contract.

2.4 No failure or delay by Supplier to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

2.5 Supplier may assign, delegate, license, hold on trust or subcontract all or any part of its rights or obligations under the Contract.

2.6 The Contract is personal to Buyer who may not assign, delegate, license, hold on trust or subcontract all or any of its rights or obligations under the Contract without Supplier's prior written consent.

2.7 Save as set out in **clause 10.5**, the Parties to the Contract do not intend that any of its terms will be enforceable by any person not a party to it.

2.8 The Contract and the Specification contain all the terms which Supplier and Buyer have agreed in relation to the Works and supersede any prior written or oral agreements, representations or understandings between the Parties relating to such Works. Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Supplier which is not set out in the Contract or Specification. Nothing in this clause will exclude any liability which one Party would otherwise have to the other Party in respect of any statements, promises or representations made fraudulently.

### 3. Notices

3.1 Any notice or demand in connection with the Contract will be in writing and may be delivered by hand, registered mail or facsimile provided a transmission receipt is retained or legally binding registered e-mail, addressed to the recipient at its registered office and will be marked for the attention of the General Manager/Company Secretary (or such other address or person which the recipient has notified in writing to the sender in accordance with this clause, to be received by the sender not less than seven Business Days before the notice is dispatched).

3.2 The notice, demand or communication will be deemed to have been duly served:

3.2.1 if delivered by hand, at the time of delivery; or

3.2.2 if delivered by registered mail or e-mail, 48 hours after being posted or in the case of registered Airmail 10 days after being posted (excluding days other than Business Days) or in the case of facsimile the time received

provided that, where in the case of delivery by hand or by facsimile such delivery occurs either after 4.00 pm on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).

3.3 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

### 4. Payment

4.1 Subject to **clause 4.9**, Supplier may invoice Buyer for the Goods at such time as set out in the acknowledgement of order or at any time after delivery and for the Services on or at any time after performance commences and payment is due in the currency stated in the written acknowledgement of order (or where no acknowledgement of order is issued as stated in the quotation of Works) thirty days after date of such invoice.

4.2 No payment will be deemed to have been received until Supplier has received cleared funds.

4.3 All sums payable to Supplier under the Contract will become due immediately upon termination of the Contract.

4.4 All payments to be made by Buyer under the Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless Buyer is required by law to make any such deduction or withholding.

4.5 Supplier may appropriate any payment made by Buyer to Supplier to such of the invoices for the Works as Supplier thinks fit, despite any purported appropriation by Buyer.

4.6 If any sum payable under the Contract, or any other agreement between Buyer and Supplier, is not paid when due then, without prejudice to Supplier's other rights under the Contract, Supplier will be entitled to suspend deliveries of the Goods or performance of the Services until the outstanding amount has been received by Supplier from Buyer.

4.7 If any sum payable under the Contract is not paid when due then, without prejudice to Supplier's other rights under the Contract, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at three per cent per annum over Barclays Bank plc base rate from time to time

4.8 Notwithstanding anything contained in the Contract to the contrary, in the event that there are withholding taxes imposed by the tax authorities in respect of payments due pursuant to the Contract, Buyer shall be entitled to deduct and pay such withholding taxes to the said tax authorities on behalf of Supplier unless Supplier has previously provided Buyer with evidence satisfactory to the said tax authorities in the form of certification from its auditors/tax authorities that Supplier is not subject to tax on the relevant income. If any withholding taxes are deducted and paid to such tax authorities then Buyer will provide to Supplier within thirty days from the date of Buyer's payment to the Supplier the tax credit documentation necessary for Supplier to receive a tax credit equal to the withholding tax. Where Supplier has made reasonable efforts to reclaim the withholding tax but is unable to do so (in whole or in part), Buyer shall pay such an amount to Supplier such that the net amount, after deduction of the withholding taxes that Supplier has been unable to reclaim, is equal to the amount that Supplier would have received from Buyer had such withholding requirement not been applicable.

4.9 Where stated in the Supplier's quotation, payment shall be made by the Buyer as follows:

4.9.1 a prepayment of 100% (one hundred percent) of the total Contract price shall be payable on receipt of the Supplier's pro-forma invoice. Payment of such sum shall be made by the Buyer to Supplier by either bank transfer or by banker's draft, in each case the Buyer is to ensure that the sum is received in cleared funds in the Seller's account within 30 days of the date of the pro-forma invoice; or

4.9.2 Payment of the Contract price or any instalment thereof shall be made by an Irrevocable Letter of Credit, in all respects acceptable to the Supplier, and confirmed by a major UK clearing bank in favour of the Supplier.

### 5. Personnel

Without in any way restricting the right of an employee freely to change employment, if an employee of either Party is induced either directly or indirectly to enter the service of or commence an engagement (in any capacity whatsoever) with the other Party at any time during the period until completion of the Supplier's warranty obligation pursuant to **clause 22.1** or within 6 months thereafter, then that other Party will pay an amount equal to the annual cost of employing such employee (for the avoidance of doubt to include only the annual cost of such employee's net salary and net benefits based on the employee's salary at the date of termination of the employee's employment by either Party). Such payment is made in recognition only of the disruption that such inducements would cause to the efficient conduct of the former employer's business.

**6. Confidentiality**

6.1 Each Party will keep confidential any and all Confidential Information that it may acquire from the other Party.

6.2 Neither Party will use the Confidential Information of the other Party for any purpose other than to perform its obligations under the Contract. Each Party will ensure that its officers and employees comply with the provisions of this **clause 6 (Confidentiality).**

6.3 The obligations on the recipient of the Confidential Information set out in **clauses 6.1** and **6.2** will not apply to any information which:

6.3.1 is publicly available or becomes publicly available through no act or omission of the recipient; or

6.3.2 the recipient is required to disclose by order of a court of competent jurisdiction, but only to the extent stated in such order.

6.4 Each Party agrees to allow the other Party and its affiliates to store and use the other Party's business contact information, including names, business phone numbers, and business e-mail addresses (together referred to as "**Contact Information**"), in connection with this Contract anywhere they do business. Such information will be processed and used only in connection with this Contract and the marketing of Supplier's services, and may be provided to subcontractors who promote, market and support certain Supplier goods and services, and to any assignees of either Party for uses consistent with the Contract.

6.5 Upon termination or expiration of the Contract, each Party agrees at the request of the other Party to destroy and certify destruction of all Confidential Information in its possession received from the other.

**7. Intellectual Property**

7.1 Subject to the pre-existing rights of third parties, all Intellectual Property Rights generated under the Contract in any Goods or arising out of the performance of any Services shall vest in and be the exclusive property of Supplier.

7.2 No right or licence is granted to Buyer in respect of the existing or future Intellectual Property Rights of Supplier, except the right to use the Goods, or resell the Goods (excluding the Software which may only be sub-licensed), or use the Services in each case in Buyer's ordinary course of business and, in the case of the Software, solely for the purpose of the use of the Works.

7.3 Buyer will not without Supplier's prior consent allow any trademarks of Supplier or other words or marks applied to the Works to be obliterated, obscured or omitted nor add any additional marks or words.

7.4 Buyer shall not cause or permit the reverse engineering, disassembly, or decompilation of the Goods or otherwise cause or permit any attempt to derive, obtain or modify the source code of the Software, except to the extent permitted by law.

7.5 If the Software is subject to a separate license agreement between Buyer and Supplier, then the terms of such separate license agreement shall supersede the terms of any Contract insofar as they explicitly relate to the licensing of such Software.

**8. Force Majeure**

8.1 Supplier will be deemed not to be in breach of the Contract or otherwise liable to Buyer for any failure or delay in performing its obligations under the Contract due to Force Majeure, provided that it has and continues to comply with its obligations set out in this **clause 8 (Force Majeure).**

8.2 If Supplier's performance of its obligations under the Contract is affected by Force Majeure:

8.2.1 it will give written notice to Buyer, specifying the nature and extent of the Force Majeure, as soon as reasonably practicable after becoming aware of the Force Majeure and will at all times use all reasonable endeavours to bring the Force Majeure event to an end and, whilst the Force Majeure is continuing, minimise its severity, without being obliged to incur any expenditure;

8.2.2 subject to the provisions of **clause 8.3**, the date for performance of such obligation will be suspended only for a period equal to the delay caused by such event; and

8.2.3 it will not be entitled to payment from Buyer in respect of extra costs and expenses incurred by virtue of the Force Majeure.

8.3 If the Force Majeure in question continues for more than one hundred and eighty days, either Party may give written notice to the other to terminate the Contract. The notice to terminate must specify the termination date, which must not be less than thirty days after the date on which the notice is given, and once such notice has been validly given, the Contract will terminate on that termination date.

**9. Termination**

9.1 Either Party may by notice in writing served on the other Party terminate the Contract immediately if that other Party:

9.1.1 is in material breach of any of the terms of the Contract and, where the breach is capable of remedy, the Party in breach fails to remedy such breach within thirty days of service of a written notice from the Party not in breach, specifying the breach and requiring it to be remedied. Failure to pay any sums due in accordance with the Contract is a material breach of the terms of the Contract;

9.1.2 is unable to pay its debts as they fall due, makes a proposal for a voluntary arrangement or convenes a meeting of its creditors to consider such a proposal, becomes subject to any voluntary arrangement or compromise, has a judicial manager appointed over any of its assets, undertaking or income, passes a resolution for its winding-up (save for the sole purpose of a solvent liquidation to effect a reconstruction or amalgamation), is subject to a petition presented to any court for its winding-up, has a provisional liquidator appointed, has a proposal made for a compromise or arrangement under Part 26 Companies Act 2006 (save for the sole purpose of a solvent reconstruction or amalgamation), has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator filed at any court by any person or is the subject of a notice to strike off the register of companies maintained by the relevant authority in the country where that Party is incorporated;

9.1.3 has any warrant of execution or other process levied or enforced on any of its property; or

9.1.4 ceases to trade or appears in the reasonable opinion of the other Party likely to cease to trade.

9.2 Supplier may by notice in writing served on Buyer terminate the Contract immediately if:

9.2.1 Buyer has a change in its senior management and/or control as defined by section 416 Income and Corporation Taxes Act 1988;

9.2.2 the equivalent of any of **clauses 9.1.1 to 9.1.4** or **9.2.1** occurs to Buyer under the jurisdiction to which Buyer is subject; or

9.2.3 Buyer commences the manufacture of any goods which are similar to or may compete with the Goods.

9.3 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of either Buyer or Supplier accrued prior to termination and the conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

9.4 Supplier will be entitled to suspend any deliveries or performance otherwise due to occur following service of a notice specifying a breach under **clause 9.1.1**, or if the Buyer is in breach or default under any other agreement between the Parties, until such breach or default is remedied or the Contract terminates, whichever occurs first.

**10. Exclusion and Limitation of Liability**

10.1 SUPPLIER DOES NOT EXCLUDE OR LIMIT ITS LIABILITY (IF ANY) TO BUYER FOR ANY MATTER FOR WHICH IT WOULD BE ILLEGAL FOR SUPPLIER TO EXCLUDE OR LIMIT OR TO ATTEMPT TO EXCLUDE OR LIMIT ITS LIABILITY.

10.2 OTHER THAN ANY LIABILITY OF SUPPLIER ARISING UNDER **CLAUSE 10.1**, WHICH SHALL NOT BE LIMITED, AND WITHOUT PREJUDICE TO THE OTHER PROVISIONS OF THIS **CLAUSE 10 (EXCLUSION AND LIMITATION OF LIABILITY)**, SUPPLIER'S AGGREGATE LIABILITY AS DEFINED IN PART D (DEFINITIONS AND INTERPRETATION) UNDER EACH CONTRACT WILL BE LIMITED TO AN AMOUNT EQUAL TO THE GREATER OF 115% OF THE AMOUNT PAID BY BUYER TO SUPPLIER UNDER THAT CONTRACT OR £10,000.

10.3 EXCEPT AS PROVIDED IN **CLAUSE 10.1**, SUPPLIER WILL BE UNDER NO LIABILITY AS DEFINED IN PART D (DEFINITIONS AND INTERPRETATION) TO BUYER WHATSOEVER IN RESPECT OF

10.3.1 ANY CLAIM ARISING OUT OF AN EVENTWHICH IS CAUSED, OR CONTRIBUTED TO, BY THE GOODS AND SUCH EVENT OCCURS AFTER THE COMMENCEMENT OF THE LAUNCH PROCEDURE OF THE VEHICLE CARRYING SUCH GOODS INTO SPACE;

10.3.2 PURE ECONOMIC LOSS, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF REVENUE, LOSS OF CONTRACTS, LOSS OF GOODWILL, WASTED EXPENDITURE, LOSS OF ANTICIPATED EARNINGS OR SAVINGS (WHETHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL) OR

10.3.3 LOSS OF USE OR VALUE OR DAMAGE OF ANY DATA OR EQUIPMENT (INCLUDING SOFTWARE), WASTED MANAGEMENT, OPERATION OR OTHER TIME (WHETHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL) OR

10.3.4 ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSS,

IN EACH CASE HOWSOEVER CAUSED ARISING OUT OF OR IN CONNECTION WITH:

10.3.5 ANY OF THE WORKS, OR THE MANUFACTURE OR SALE OR SUPPLY, OR FAILURE OR DELAY IN SUPPLY, OF THE WORKS BY SUPPLIER OR ON THE PART OF SUPPLIER'S EMPLOYEES, AGENTS OR SUBCONTRACTORS;

10.3.6 ANY BREACH BY SUPPLIER OF ANY OF THE EXPRESS OR IMPLIED TERMS OF THE CONTRACT;

10.3.7 ANY USE MADE OR RESALE BY BUYER OF ANY OF THE WORKS, OR OF ANY PRODUCT INCORPORATING ANY OF THE WORKS; OR

10.3.8 ANY STATEMENT MADE OR NOT MADE, OR ADVICE GIVEN OR NOT GIVEN, BY OR ON BEHALF OF SUPPLIER.

10.4 EXCEPT AS EXPRESSLY SET OUT IN THE CONTRACT, SUPPLIER HEREBY EXCLUDES TO THE FULLEST EXTENT PERMISSIBLE IN LAW, ALL CONDITIONS, WARRANTIES AND STIPULATIONS, EXPRESS (OTHER THAN THOSE SET OUT IN THE CONTRACT) OR IMPLIED, STATUTORY, CUSTOMARY OR OTHERWISE WHICH, BUT FOR SUCH EXCLUSION, WOULD OR MIGHT SUBSIST IN FAVOUR OF BUYER, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

10.5 EACH OF SUPPLIER'S EMPLOYEES, AGENTS AND SUBCONTRACTORS MAY RELY UPON AND ENFORCE THE EXCLUSIONS AND RESTRICTIONS OF LIABILITY IN THE CONTRACT IN THAT PERSON'S OWN NAME AND FOR THAT PERSON'S OWN BENEFIT, AS IF THE WORDS "ITS EMPLOYEES, AGENTS AND SUBCONTRACTORS" FOLLOWED THE WORD SUPPLIER WHEREVER IT APPEARS IN THOSE CLAUSES SAVE FOR EACH REFERENCE IN **CLAUSE 10.3.5**.

10.6 BUYER ACKNOWLEDGES THAT THE ABOVE PROVISIONS OF THIS **CLAUSE 10 (EXCLUSION AND LIMITATION OF LIABILITY)** ARE REASONABLE AND REFLECTED IN THE PRICE WHICH WOULD BE HIGHER WITHOUT THOSE PROVISIONS, AND BUYER WILL ACCEPT SUCH RISK AND/OR INSURE ACCORDINGLY.

10.7 BUYER IS SOLELY RESPONSIBLE AND LIABLE FOR THE PROPER LEGAL SECURE DISPOSAL OF ALL MATERIALS PURCHASED FROM SUPPLIER AT THE END-OF-LIFE CYCLE OF SUCH MATERIALS.

## 11. Law

The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract or of any non-contractual obligations arising out of or in connection with it will be governed by English law.

## 12. Disputes

12.1 Resolving Disputes

The intent of the Parties is to identify and resolve any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it (for the purpose of this clause, a Dispute) promptly. Each Party agrees to perform as follows:

12.1.1 to notify the other Party of any Dispute in reasonable detail as soon as possible after any Dispute arises;

12.1.2 to negotiate in good faith to seek to resolve the Dispute; and

12.1.3 if a Dispute is not resolved within thirty days of it arising, either Party shall be entitled to refer to and finally resolve such Dispute by arbitration under the LCIA Arbitration Rules (for the purpose of this clause, the Rules). The Rules are incorporated by reference into this clause and capitalised terms used in this clause which are not otherwise defined in this Agreement have the meaning given to them in the Rules. The number of arbitrators shall be three. The Parties shall each nominate one arbitrator for appointment by the LCIA Court. The two arbitrators nominated by the Parties shall jointly nominate the Chairman for appointment by the LCIA Court. Any requirement in the Rules to take account of the nationality of a person considered for appointment as an arbitrator shall be dis-applied and a person may be nominated or appointed as an arbitrator (including as Chairman) regardless of his nationality. The seat, or legal place of arbitration, shall be London. The language used in the arbitral proceedings shall be English. All documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by a certified English translation. Witnesses who are unable to speak English shall be permitted to give evidence through a translator. Unless the parties agree to extend this period, the Tribunal will render its award in writing as soon as is reasonably practicable of the close of the hearing. In no event shall the Tribunal have the right or power to award punitive or exemplary damages. The jurisdiction of the English courts under s45 and s69 Arbitration Act 1996 is excluded.

12.2 If, following the time specified for service of the Statement of Case, the Statement of Defense, the Statement of Reply/Defense to Counterclaim and/or the Statement of Reply to Defense to Counterclaim, as applicable (the Statements), it appears to the Tribunal that there is or may be no real prospect of succeeding on any or all of the claims made in the Statements or of successfully defending any or all of the claims made in the Statements, the Tribunal may determine such claim(s) by a summary procedure if it considers that it is in the interests of justice to do so. In the event that a summary procedure is adopted, the Tribunal shall proceed to determine such claim(s) as soon as reasonably practicable. The Tribunal may call for further short written submissions in relation to such claim(s) and shall only hold an oral hearing to determine such claim(s) if it feels that it is necessary to do so. The Tribunal may decide to determine only certain claims advanced in the arbitration by the summary procedure.

12.3 Service of any Request for Arbitration made pursuant to this clause shall be by written notice in accordance with Notices **clause 3**. This **clause 12.3** does not affect any other method of service allowed by law.

12.4 This **clause 12** will not prevent a Party (the "affected Party") from:

12.4.1 seeking injunctive relief in the case of any breach or threatened breach by the other Party of any obligation of confidentiality or any infringement by the other Party of the affected Party's Intellectual Property Rights;

12.4.2 commencing any proceedings where this is reasonably necessary to avoid any loss of a claim due to the rules on limitation of actions; or

12.4.3 commencing proceedings in the case of non-payment of an undisputed invoice.

## 13. Instalments

13.1 Supplier may deliver the Works by separate instalments or perform any Services in stages. Each separate instalment or stage will be invoiced and paid for in accordance with the provisions of the Contract.

Each instalment or stage will be a separate Contract and no cancellation or termination of any one Contract relating to an instalment or stage will entitle Buyer to repudiate or cancel any other Contract, instalment or stage.

## 14. Export/Import

14.1 The Works (including, without limitation, any Software) may be subject to the export or import laws and regulations of:

14.1.1 the United States, including without limitation the International Traffic in Arms Regulations (ITAR) (22 C.F.R. Parts 120-130), the U.S. Export Administration Regulations (15 C.F.R. Parts 730-774), and the economic and trade sanctions administered by the U.S. Department of Treasury Office of Foreign Assets Control;

14.1.2 the European Union and its member states, including without limitation Council Regulation (EC) No. 1334/2000; and

14.1.3 other countries

(collectively, "**Export/Import Law**"). Buyer agrees to comply strictly with all Export/Import Laws applicable to the Works. Buyer shall promptly notify Supplier of any authorisation requirements under Export/Import Laws that may apply to delivery of the Works to Buyer site(s). Buyer acknowledges and agrees that the Works shall not be exported, re-exported, trans-shipped or otherwise transferred to Cuba, Iran, North Korea, Syria, Sudan, or any other countries for which the United States and/or the European Union maintains an embargo (collectively, "**Embargoed Countries**"), or a national or resident thereof, or to any person or entity on the U.S. Department of Treasury List of Specially Designated Nationals, the U.S. Department of Commerce Denied Parties or Entity List, or to any person on any comparable list maintained by the European Union or its member states (collectively, "**Denied or Restricted Parties**"). The lists of Embargoed Countries and Denied or Restricted Parties are subject to change without notice. Buyer represents and warrants that neither it nor any of their customers or their users is located in, a national or resident of, or under the control of an Embargoed Country or similarly Denied or Restricted Party. Buyer specifically shall obtain all required authorizations from the U.S. (or EU as applicable) Government before transferring or otherwise disclosing technical data or technology (as those terms are defined in 22 C.F.R. § 120.10 and 15 C.F.R. § 722, respectively), to any Foreign Person (as defined in 22 C.F.R. § 120.16).

14.2 Registration

In accordance with 22 C.F.R. Part 122, any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services is required to register with the U.S. State Department's Directorate of Defense Trade controls. Engaging in the business of manufacturing or exporting defense articles or furnishing defense services requires only one occasion of manufacturing or exporting a defense article or furnishing defense services. Manufacturers who do not engage in exporting must nevertheless register.

14.3 Acceptance of these terms and conditions certifies to the Supplier that the Buyer is in compliance with 22 C.F.R. Part 120 as required and the Buyer's registration will remain valid during the terms of this agreement.

14.4 Further to acceptance, the Buyer further certifies it:

14.4.1 Understands its obligation to protect EAR or ITAR controlled Goods and Services as data as necessary from unauthorized disclosure or access to foreign person employees or visitors.

14.4.2 In the performance of the contract, the Buyer understands its obligation to determine whether it will require the use of third party subcontractors to access any technical data, Goods and Services. If required, the Buyer is responsible for identifying and licensing any activity that requires export authorization from the Department of Commerce, Bureau of Industry and Security or the Department of State, Directorate of Defense Trade Controls.

14.5 The Goods shall not be resold or exported to countries specified in the Country Guidance Chart which can be found at https://chelton.com/export-guidance without prior written approval of Supplier.

**15. Corrupt Practices**

15.1 Buyer represents and warrants that it understands the provisions of any relevant laws relating to the prevention of corruption and agrees to comply with them to the extent that they apply.

**16. Indemnity**

16.1 BUYER AGREES TO INDEMNIFY, KEEP INDEMNIFIED AND HOLD HARMLESS SUPPLIER FROM AND AGAINST:

16.1.1 ALL COSTS (INCLUDING THE COSTS OF ENFORCEMENT), EXPENSES, LIABILITIES (INCLUDING ANY TAX LIABILITY), CLAIMS ARISING FOR DEATH OR PERSONAL INJURY, DIRECT, INDIRECT OR CONSEQUENTIAL LOSS (ALL THREE OF WHICH TERMS INCLUDE, WITHOUT LIMITATION, PURE ECONOMIC LOSS, LOSS OF PROFITS, LOSS OF BUSINESS, DEPLETION OF GOODWILL AND LIKE LOSS), DAMAGES, CLAIMS, DEMANDS, PROCEEDINGS OR LEGAL COSTS (ON A FULL INDEMNITY BASIS) AND JUDGMENTS WHICH SUPPLIER INCURS OR SUFFERS AS A CONSEQUENCE OF A DIRECT OR INDIRECT BREACH OF THE CONTRACT OR NEGLIGENT PERFORMANCE OR DELAY OR FAILURE IN PERFORMANCE OR WILFUL MISCONDUCT BY BUYER OR ITS EMPLOYEES, AGENTS OR CONTRACTORS. THE FOREGOING INDEMNITY SHALL NOT INCLUDE ANY LOSSES DUE SOLELY TO THE NEGLIGENCE OR WILFUL MISCONDUCT OF SUPPLIER; AND

16.1.2 ANY CLAIMS:-

16.1.2.1 BY THIRD PARTIES WHICH ARE CAUSED BY OR ARISE OUT OF OR IN CONNECTION WITH

16.1.2.1.1 ANY ACT OR OMISSION OF SUPPLIER CARRIED OUT PURSUANT TO INSTRUCTIONS OF BUYER; OR

16.1.2.1.2 ANY BREACH BY BUYER OF ANY TERMS OF THE CONTRACT;

16.1.2.2 BY BUYER'S CUSTOMERS OR USERS OF THE WORKS; AND

16.1.2.3 ARISING FROM USE OF THE WORKS OTHER THAN AS SPECIFIED IN THE SPECIFICATION.

**PART B - GOODS**

**17. Quantity and Description of the Goods**

17.1 The quantity and description of the Goods will be as set out in Supplier's acknowledgement of order.

17.2 All samples, drawings, data sheets descriptive matter, specifications (other than the Specification) and advertising issued by Supplier (or the manufacturer of the Goods) and any descriptions or illustrations contained in Supplier's or manufacturer's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods represented by or described in them. They will not form part of the Contract and this is not a sale by sample.

17.3 Supplier may make any changes to the Specification, design, materials or finishes of the Goods which:

17.3.1 are required to conform with any applicable safety or other statutory or regulatory requirements; or

17.3.2 do not materially affect their quality or performance.

**18. Price of the Goods**

18.1 The price for the Goods will be the price specified in the acknowledgement of order and, unless otherwise expressly specified in such written acknowledgement of order, is exclusive of any:

18.1.1 costs of packaging and carriage of the Goods; and

18.1.2 value added tax or other applicable sales tax or duty which will be added to the sum in question.

18.2 cost of any pallets and returnable packaging or containers, which will be paid for by Buyer in addition to the price for the Goods when it is due to pay for the Goods.

18.3 Supplier will be entitled to increase the price of the Goods following any changes in the Specification made at the request of Buyer and agreed by Supplier or to cover any extra expense as a result of Buyer's instructions or lack of instructions, or to comply with the requirements referred to in **clause 17.3.1**.

**19. Delivery of the Goods**

19.1 Unless otherwise expressly specified in the written acknowledgement of order, delivery of the Goods will either be made:

19.1.1 ex-works as defined in INCOTERMS 2020, when deliveries are made within the United Kingdom; or

19.1.2 FCA as defined in INCOTERMS 2020, where deliveries are made outside of the United Kingdom.

19.2 Delivery of the Goods will be made during Supplier's usual business hours.

19.3 Supplier will use reasonable endeavours to deliver and perform each of Buyer's orders for the Goods within the time agreed when Buyer places an order and Supplier provides the acknowledgement of order and, if no time is agreed, then within a reasonable time, but the time of delivery will not be of the essence. If, despite those endeavours, Supplier is unable for any reason to fulfil any delivery on the specified date, Supplier will be deemed not to be in breach of this Contract, nor (for the avoidance of doubt) will Supplier have any Liability to Buyer for any delay or failure in delivery except as set out in this condition. Any delay in delivery will not entitle Buyer to cancel the Contract unless and until Buyer has given one hundred and twenty days' written notice (or such longer period specified in the written acknowledgement of Contract) to Supplier requiring the delivery to be made and Supplier has not fulfilled the delivery within that period. If Buyer cancels the Contract in accordance with this clause then:

19.3.1 Supplier will refund to Buyer any sums which Buyer has paid to Supplier in respect of that Contract or part of the Contract which has been cancelled and has not been delivered or is not ready for delivery; and

19.3.2 Buyer will be under no liability to make any further payments under **clause 4.1** in respect of that Contract or part of the Contract which has been cancelled unless the Goods were delivered or are ready for delivery.

19.4 Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading the Goods.

19.5 If Buyer fails to take delivery of any of the Goods when they are ready for delivery or fails to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time (except solely on account of Supplier's default), then, without prejudice to any other rights or remedies of Supplier

19.5.1 The Goods shall be deemed to have been delivered on the due date for delivery;

19.5.2 Supplier may immediately store or arrange for storage of the Goods at Buyer's risk and expense and charge Buyer for all related costs and expense (including, without limitation, storage, handling, transportation, security and insurance costs); and

19.5.3 If Buyer has failed to remedy such default within five (5) business days following receipt of written notice from Supplier requiring it to do so, Supplier may sell or otherwise dispose of any of the Goods at best price reasonably in the circumstances and : a) charge Buyer for any shortfall between the net proceeds of sale and the price payable under the Contract; or b)account to Buyer for any excess achieved over the price payable under the Contract, in each case after deduction of all costs, charges and expenses incurred by Supplier in storing, maintaining, transporting and selling or otherwise disposing of the Goods.

19.5.4 Buyer shall remain liable for the full Contract Price and all additional costs and expenses incurred by Supplier under this clause until the Goods are delivered to Buyer or sold or otherwise disposed of by Seller.

19.6 Buyer shall provide or procure the provision to Supplier of all facilities and such other assistance and services as may be necessary to the extent and quality necessary to enable Supplier to fulfil its obligations under the Contract. This assistance shall include (but not be limited to) the timely provision of and access to information, data, accommodation, computing resources, appropriate Buyer employees and a safe working environment.

**20. Risk/Ownership**

20.1 Risk of damage to or loss of the Goods will pass to Buyer on delivery (or deemed delivery in accordance with **clause 19.5**).

20.2 Ownership of the Goods (excluding Software) will not pass to Buyer until Supplier has received in full (in cash or cleared funds) all sums due to it in respect of:

20.2.1 the Goods; and

20.2.2 all other sums which are or which become due to Supplier from Buyer on any account.

20.3 Until ownership of the Goods (excluding Software) has passed to Buyer, Buyer must:

20.3.1 hold the Goods on a fiduciary basis as Supplier's bailee;

20.3.2 store the Goods (at no cost to Supplier) separately from all other Goods of Buyer or any third party in such a way that they remain readily identifiable as Supplier's property;

20.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

20.3.4 maintain the Goods in satisfactory condition insured on Supplier's behalf for their full price against all risks to the reasonable satisfaction of Supplier, and will whenever requested by Supplier produce a copy of the policy of insurance.

20.4 Buyer may resell the Goods (or, in the case of the Software, sublicense the Software) before ownership has passed to it solely on the following conditions:

20.4.1 any sale will be effected in the ordinary course of Buyer's business at full market value and Buyer will account to Supplier accordingly; and

20.4.2 any such sale will be a sale of Supplier's property on Buyer's own behalf and Buyer will deal as principal when making such a sale.

20.5 Buyer's right to hold the Goods will terminate immediately if any of the circumstances set out in **clause 9.1 or 9.2** occur.

20.6 Supplier will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from Supplier.

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

20.8 Where Supplier is unable to determine whether any Goods are the goods in respect of which Buyer's right to possession has terminated, Buyer will be deemed to have sold all goods of the kind sold by Supplier to Buyer in the order in which they were invoiced to Buyer.

20.9 On termination of the Contract, howsoever caused, Supplier's (but not Buyer's) rights contained in this **clause 20 (Risk/Ownership)** will remain in effect.

**21. Resale**

21.1 Buyer represents and warrants that it shall not, without the express prior written approval of the Supplier, resell the Goods in exactly the same condition in which they were supplied by the Supplier at the Delivery Point. The Supplier may make approval subject to such conditions as Supplier shall, in its discretion, deem appropriate, including but not limited to informing the Supplier of each occasion on which the Buyer resells the goods. For the purposes of this clause resale shall not include where Buyer integrates such Goods or explicitly provides such Goods as part of a larger Buyer solution or system for onward sale.

**22. Warranty of the Goods**

22.1 SUPPLIER WILL, FREE OF CHARGE, WITHIN A PERIOD OF TWELVE MONTHS, OR NINETY DAYS FOR CONTRACTS AGREED FOR THE REPAIR OF CLIENT OWNED GOODS ORIGINALLY SUPPLIED BY THE SUPPLIER, EACH PERIOD COMMENCING FROM THE DATE OF DISPATCH OF GOODS, WHICH ARE PROVED TO THE REASONABLE SATISFACTION OF SUPPLIER TO NOT COMPLY WITH SPECIFICATION DUE TO DEFECTS IN MATERIAL, WORKMANSHIP OR DESIGN (OTHER THAN A DESIGN MADE, FURNISHED OR SPECIFIED BY BUYER), REPAIR, OR AT ITS OPTION REPLACE, SUCH GOODS. THIS OBLIGATION WILL NOT APPLY WHERE:

22.1.1 NON-COMPLIANCE IS ATTRIBUTABLE TO ANY FAIR WEAR AND TEAR RELATING TO THE GOODS;

22.1.2 THE GOODS HAVE BEEN IMPROPERLY ALTERED IN ANY WAY WHATSOEVER, OR HAVE BEEN SUBJECT TO MISUSE OR UNAUTHORISED REPAIR;

22.1.3 THE GOODS HAVE BEEN IMPROPERLY INSTALLED OR CONNECTED;

22.1.4 ANY MAINTENANCE REQUIREMENTS RELATING TO THE GOODS HAVE NOT BEEN COMPLIED WITH;

22.1.5 ANY INSTRUCTIONS AS TO STORAGE OF THE GOODS HAVE NOT BEEN COMPLIED WITH IN ALL RESPECTS; OR

22.1.6 BUYER HAS FAILED TO NOTIFY SUPPLIER OF ANY DEFECT OR SUSPECTED DEFECT WITHIN FOURTEEN DAYS OF THE DELIVERY WHERE THE DEFECT SHOULD BE APPARENT ON REASONABLE INSPECTION, OR WITHIN FOURTEEN DAYS OF THE SAME COMING TO THE KNOWLEDGE OF BUYER WHERE THE DEFECT IS NOT ONE WHICH SHOULD BE APPARENT ON REASONABLE INSPECTION, AND IN ANY EVENT NO LATER THAN TWELVE MONTHS FROM THE DATE OF DELIVERY OR PERFORMANCE.

22.2 SUPPLIER'S OBLIGATION UNDER **CLAUSE 22.1** IS SUBJECT TO THE GOODS BEING RETURNED, IF SUPPLIER SO REQUIRES, BY BUYER TO SUPPLIER CARRIAGE PAID. SUPPLIER WILL REFUND TO BUYER THE COST OF CARRIAGE ON THE RETURN OF ANY SUCH DEFECTIVE GOODS IF BUYER'S WARRANTY CLAIM IS SUBSTANTIATED TO THE REASONABLE SATISFACTION OF SUPPLIER, AND WILL DELIVER ANY REPAIRED OR REPLACEMENT GOODS TO BUYER AT SUPPLIER'S OWN EXPENSE.

22.3 ANY GOODS WHICH HAVE BEEN REPLACED WILL BELONG TO SUPPLIER. ANY REPAIRED OR REPLACEMENT GOODS WILL BE LIABLE TO REPAIR OR REPLACEMENT UNDER THE TERMS SPECIFIED IN THIS CLAUSE FOR THE UNEXPIRED PORTION OF THE TWELVE MONTH PERIOD FROM THE ORIGINAL DATE OF DELIVERY OF THE REPLACED GOODS PROCESS.

**PART C - SERVICES**

**23. Quantity and Description of the Services**

23.1 The quantity and description of the Services will be as set out in Supplier's acknowledgement of order.

23.2 All samples, drawings, descriptive matter, specifications and advertising issued by Supplier and any descriptions or illustrations contained in Supplier's or manufacturer's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services represented by or described in them. They will not form part of the Contract.

23.3 Supplier may make any changes to the Specification which:

23.3.1 are required to conform with any applicable safety or other statutory or regulatory requirements; or

23.3.2 do not materially affect their quality or performance.

**24. Price of the Services**

24.1 The price for the Services will be the price specified in the acknowledgement of order and is exclusive of any value added tax or other applicable sales tax or duty which will be added to the sum in question.

24.2 Supplier will be entitled to increase the price of the Services following any changes in the Specification made at the request of Buyer and agreed by Supplier or to cover any extra expense as a result of Buyer's instructions or lack of instructions, or to comply with the requirements referred to in **clause 23.3.1**.

**25. Performance of the Services**

25.1 The Services will be performed at the Service Point.

25.2 Performance of the Services will be made during Supplier's usual business hours.

25.3 Supplier will use reasonable endeavours to deliver and perform each of Buyer's orders for the Services within the time agreed when Buyer places an order and Supplier provides the acknowledgement of order and, if no time is agreed, then within a reasonable time, but the time of performance will not be of the essence. If, despite those endeavours, Supplier is unable for any reason to fulfil any performance on the specified date, Supplier will be deemed not to be in breach of this Contract, nor (for the avoidance of doubt) will Supplier have any Liability to Buyer for any delay or failure in performance except as set out in this condition. Any delay in performance will not entitle Buyer to cancel the Contract unless and until Buyer has given one hundred and twenty days' written notice (or such longer period specified in the written acknowledgement of Contract) to Supplier requiring the performance to be made and Supplier has not fulfilled the performance within that period. If Buyer cancels the Contract in accordance with this clause then:

25.3.1 Supplier will refund to Buyer any sums which Buyer has paid to Supplier in respect of that Contract or part of the Contract which has been cancelled and has not been delivered or is not ready for delivery; and

25.3.2 Buyer will be under no liability to make any further payments under **clause 4.1** in respect of that Contract or part of the Contract which has been cancelled.

25.4 If Buyer fails to provide any instructions, documents, licences or authorisations required to enable the Services to be performed on time (except solely on account of Supplier's default), the Services will be deemed to have been performed on the due date

25.5 Buyer shall provide or procure the provision to Supplier of all facilities and such other assistance and services as may be necessary to the extent and quality necessary to enable Supplier to fulfil its obligations under the Contract. This assistance shall include (but not be limited to) the timely provision of and access to information, data, accommodation, computing resources, appropriate Buyer employees and a safe working environment.

**26. Warranty for the Services**

26.1 SUPPLIER WILL, FREE OF CHARGE, WITHIN A PERIOD OF TWELVE MONTHS FROM THE DATE OF PERFORMANCE OF SERVICES WHICH ARE PROVED TO THE REASONABLE SATISFACTION OF SUPPLIER TO NOT COMPLY WITH SPECIFICATION DUE TO DEFECTS IN WORKMANSHIP REPAIR OR, AT ITS OPTION, RE-PERFORM SUCH SERVICES. THIS OBLIGATION WILL NOT APPLY WHERE BUYER HAS FAILED TO NOTIFY SUPPLIER OF ANY DEFECT OR SUSPECTED DEFECT WITHIN FOURTEEN DAYS OF THE DELIVERY WHERE THE DEFECT SHOULD BE APPARENT ON REASONABLE INSPECTION, OR WITHIN FOURTEEN DAYS OF THE SAME COMING TO THE KNOWLEDGE OF BUYER WHERE THE DEFECT IS NOT ONE WHICH SHOULD BE APPARENT ON REASONABLE INSPECTION, AND IN ANY EVENT NO LATER THAN TWELVE MONTHS FROM THE DATE OF DELIVERY OR PERFORMANCE.

**PART D - DEFINITIONS AND INTERPRETATION**

**27. Definitions and Interpretation**

27.1 In these Terms and Conditions the following expressions will have the following meanings unless inconsistent with the context:

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|---|---|
| **"Business Day"** | any day other than a Saturday or Sunday or a public or bank holiday in the country that Supplier is located. |
| **"Confidential Information"** | all information in respect of the business of Supplier including, without prejudice to the generality of the foregoing, any ideas, business methods, prices, business, financial, marketing, development or manpower plans, customer lists or details, computer systems and software, products or services, including but not limited to know-how or other matters connected with the products or services manufactured, marketed, provided or obtained by Supplier and information concerning Supplier's relationships with actual or potential clients, customers or suppliers and the needs and requirements of Supplier and of such persons and any other information which, if disclosed, will be liable to cause harm to Supplier. |
| **"Contract"** | any contract between Supplier and Buyer for the sale and purchase of the Goods or supply of the Services formed in accordance with **clause 1.** |
| **"Delivery Point"** | the place where delivery of the Goods is to take place under **clause 19.1.** |
| **"Documentation"** | in relation to any Works, any instructions or procedures, |

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|---|---|
| | instruction manuals, user guides and other information which is or ought to be supplied by Supplier to Buyer including information recorded or stored by any means whatsoever on any media whatsoever (including in writing or other visible form; on tape or disc; by mechanical or electrical, electronic, magnetic or optical means; and whether or not such reproductions will result in a permanent record being made). |
| **"Force Majeure"** | any cause preventing Supplier from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable contemplation and control of Supplier including, without limitation, strikes, lockouts or other industrial disputes (whether involving the workforce of Supplier or otherwise), protest, act of God, war, or national emergency, an act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, flood, storm, epidemic or default of suppliers or subcontractors. |
| **"Goods"** | any goods which Supplier supplies to Buyer (including any of them or any part of them) under a Contract including the Software. |
| **"Intellectual Property Rights"** | all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions. |
| **"Liability"** | Any liability whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise in respect of any loss or damage howsoever caused, and including without prejudice to the generality of the foregoing any liability of Supplier arising under any indemnity. |
| **"Services"** | any services which Supplier provides to Buyer (including any part of them). |
| **"Service Point"** | the place at which the Services are to be performed. |
| **"Software"** | the Supplier's Software and the Third Party Software. |
| **"Specification"** | in relation to the Goods, the Supplier's equipment design specification for the Goods or the equivalent third party specification for Goods of third party origin; or in relation to the Services, the Supplier's documents detailing the requirements of the Services. Any other specifications or documents describing the requirements of or the performance of the Works are only part of the Contract if referenced on the Supplier's order acknowledgement. |
| **"Supplier's Software"** | the Supplier's software either specified in a Contract or supplied with the Goods. |
| **"Terms and Conditions"** | the standard terms and conditions of sale set out in this document together with any special terms agreed in writing between the Parties. |
| **"Third Party Software"** | software (other than the Supplier's Software) which is specified in a Contract or supplied with the Goods. |
| **"Works"** | Goods or Services or both as the context may require. |

27.2 The headings in these Terms and Conditions are for convenience only and will not affect their construction or interpretation.