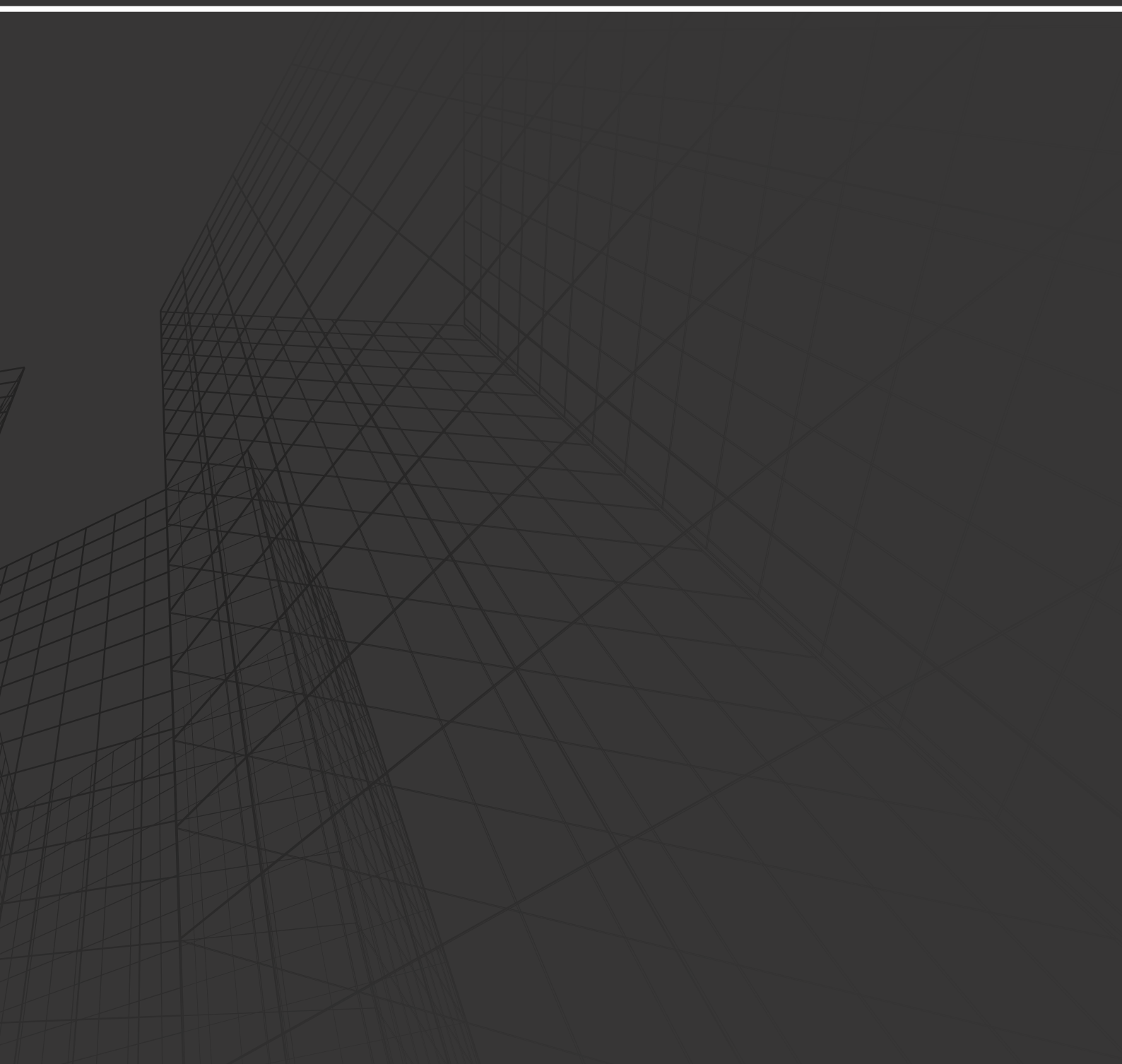




# **AXTER LIMITED**

## CONDITIONS OF SALE



The Buyer's attention is drawn in particular to the provisions of Clause 8.

**1. Interpretation**

1.1 In these Terms:

- “Buyer”** means the person who accepts the Seller's written quotation for the sale of the Goods or whose Written order for the Goods is accepted by the Seller;
- “Goods”** means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Terms;
- “Seller”** means Axter Limited (registered in England and Wales under number 01446923);
- “Contract”** means the contract for the sale and purchase of the Goods;
- “Terms”** means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;
- “Writing”** and any similar expression includes facsimile transmission and electronic mail.

1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

**2. Basis of the sale**

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Seller's Written quotation (if accepted by the Buyer), or the Buyer's Written order (if accepted by the Seller), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and by a Director of the Seller.
- 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.
- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted on entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### 3. Orders and specifications

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of the Goods and any specification for them shall be as set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or E.U. requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.5 If the Buyer wishes to cancel an order which has been accepted by the seller: -
- 3.5.1 If the Goods which are to be supplied subject to the order are standard, non-bespoke items, the Buyer can cancel the order at any time up to 14 days after delivery of the Goods. If the Goods have already been delivered to the Buyer, the order can only be cancelled if the Goods are undamaged, in the original packaging, and in a resalable condition. The Buyer will be liable for the cost of safely returning those Goods to a place of the Seller's choice, and the Buyer will be liable for a restocking charge up to 30% of the value of the returned Goods.
- 3.5.2 If the Goods which are to be supplied subject to the order are bespoke items, the order cannot be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 3.6 Any specification, drawings or details of quantities supplied by the Seller in connection with the actual or intended purchase, use or installation of the goods ("Specifications") are to be treated as approximate and shall be subject to verification by the Buyer.
- 3.7 The copyright and all other intellectual property rights therein belong to the Seller until the Buyer has title to the goods. Until that occurs the Buyer:
- 3.7.1 will return the Specifications, including all copies in the Buyer's possession, on demand from the Seller;
- 3.7.2 will not retain any copies, and
- 3.7.3 will not use the Specifications in any way otherwise than in connection with the purchase, use or installation of the goods which are the subject of the Buyer's order from the Seller.

### 4. Price of the Goods

- 4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Seller's published export price list shall apply. All prices quoted are valid for 30 days only or for a period as described in the Seller's written quotation or until earlier acceptance by the Buyer. After that period and if not accepted by the Buyer prior to expiry of that period, the prices may be altered by the Seller without giving notice to the Buyer.

- 4.2 The Seller reserves the right, by giving Written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.
- 4.4 Cancellation of orders will be accepted only at the Seller's discretion, and on such terms as the Seller may decide.

## 5. Terms of payment

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller may invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price of the Goods by the "Due Date" which is within 30 days of the date of the Seller's invoice or as described in the Seller's written quotation or other written agreement and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only on request.
- 5.3 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may:
- 5.3.1 cancel the contract or suspend any further deliveries to the Buyer;
- 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 3% per cent per annum above the National Westminster Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

## 6. Delivery

- 6.1 Delivery of the Goods shall be made by the Seller to the place requested in writing by the Buyer and as agreed by the Seller.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

- 6.4 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may:
- 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage and transport; or
- 6.5.2 return the goods to the manufacturing location and charge the Buyer for all costs plus a re-stocking charge which shall not be less than 15% of the quoted price for the goods.
- 6.6 All dates or periods are quoted in good faith but no liability is accepted for delays in delivery or for liquidated damages or any other penalty clauses however caused.
- 6.7 If delivery of goods be delayed or prevented for any cause whatever beyond the Seller's reasonable control then at the Seller's option the unperformed part of the contract may be cancelled or time for delivery may be extended. Such cancellation shall be without prejudice to already accrued rights of either party.
- 6.8 All claims for transit damage or loss must be submitted in Writing to both the carrier and the Seller within seven days of delivery. In the case of non-delivery of the whole consignment claims must be submitted in Writing to both the carrier and the Seller within ten days of receipt by the Buyer (or the Buyer's agent) of notification of despatch of the goods. In the absence of claims within these time limits the goods shall be deemed to have been properly delivered.
- 6.9 The Buyer shall unless otherwise specifically agreed be responsible for providing adequate labour and facilities at the delivery point/s for unloading goods ordered and shall keep the Seller indemnified against all claims whatsoever arising from such unloading operations.

## **7. Risk and property**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 Until the Buyer has title to the goods in accordance herewith, the Buyer shall hold the goods as the Seller's fiduciary agent and bailee and shall mark them so as to be clearly identifiable as the Seller's property and ensure that they remain clearly identifiable as such and shall store them safely and separately from other goods and shall insure the goods to the full contract price thereof against all perils usual in the Buyer's business. The customer shall on request supply the Seller with a copy of the insurance policy and shall have the interest of the Seller noted thereon, and upon the written request of the Seller shall allow access at all reasonable times to a duly appointed agent of the Seller to inspect the goods at their place of storage as aforesaid.
- 7.4 If upon making such inspection the agent shall determine the Buyer has not fully complied with the terms hereof, the Seller may at its absolute discretion serve written notice upon the Buyer specifying the appropriate steps to rectify such breach.

7.5 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods. In addition, the Seller shall have the right to trace the proceeds of any disposition of the goods by the Seller or of any insurance covering the same which shall be paid into a separate new account and not into any overdrawn account.

7.6 The Buyer shall not be entitled to pledge, create a lien over or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

**8. Defective Products**

8.1 In the event of any complaint that goods delivered do not comply with the order or are otherwise defective in regard to quality, the Buyer shall notify the Seller in writing of the nature of such complaint not later than 14 days from the date of delivery of such goods to the Buyer, and afford to the Seller or its servants or Agents all reasonable facilities for the inspection and testing of the goods complained of. No claim will be entertained by the Seller unless the foregoing conditions are complied with. The Seller will not be liable for any claims for faults discernible on inspection, such as size or colour, if made after the goods are cut, installed, or otherwise altered from the condition in which they were despatched to the Buyer. Goods subject to complaint may at the sole option of the Seller and at its sole discretion either be replaced so as to comply with the order, or a cash allowance not exceeding the amount of the purchase price of such goods may be made to the Buyer. The Seller's liability shall in no case exceed the price paid for the goods, and in no circumstances will the Seller be responsible for any loss of profits or any other losses or expenses, direct, indirect, consequential or contingent attributable to defects in material or manufacture or otherwise, except as specified in any underwritten product guarantee which may apply to the Buyer's order.

8.2 If the Buyer fails to give notice of any defective Goods in accordance with clause 8 it shall be deemed to have accepted such products.

8.3 The Seller shall be under no liability for any failure on the part of the Buyer to comply in all respects with relevant instructions for use and safety precautions and transportation, handling, storing or fixing guidelines set out or referred to in any relevant code of practice or the Seller's latest trade literature, as modified by any recommendation the Seller may make to meet special circumstances or requirements, or for loss, damage or injury caused by roof traffic, movement of buildings or their components, or incorrect use of the material, and the Buyer shall indemnify the Seller against any costs, claims or demands which may be incurred by the Seller as a result of any such failure on the part of the Buyer.

8.4 The Seller shall not be obligated to accept the return of any merchandise unless specific authority is obtained in writing from its Head Office. Except in the cases of faulty merchandise or error in completion of any order all authorised returns must be forwarded carriage paid and in full standard packs in resaleable condition. The receiving depot will be stated at the time of authorisation.

**9. Insolvency of Buyer**

9.1 This clause 9 applies if:

9.1.1 the Buyer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Buyer (within the meaning of the Insolvency Act 1986); or

- 9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 9.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2 If this clause applies then, without limiting any other right or remedy available to the Seller, the Seller may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

9.3 If before the Due Date the Buyer ceases or threatens to cease to carry on its business or trade and in any exercise of the Seller's right under this clause the Seller shall have the right to go upon any premises (with or without notice as aforesaid) owned, occupied or used by the customer or where the goods (or any of them) are situated and remove the goods even if the goods have been attached or connected to any other goods, products, plant or machinery if such goods are readily removable.

**10. General**

10.1 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

10.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.3 Any variation of this Contract must be in writing and signed by or on behalf of both the Seller and the Buyer.

10.4 No term of this Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Contract, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

10.5 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

- 10.5.1 Act of God, explosion, flood, tempest, fire or accident;
- 10.5.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 10.5.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 10.5.4 import or export regulations or embargoes;
- 10.5.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 10.5.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 10.5.7 power failure or breakdown in machinery.

- 10.6 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 10.7 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English courts.
- 10.8 (i) Both the Seller and the Buyer undertake that neither shall at any time disclose to any person any confidential information disclosed to it by the other concerning the business or affairs of the other party, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers ("Confidential Information").
- (ii) Each party may disclose the other's Confidential Information:
- (a) to its employees, officers, agents, consultants or sub-contractors ("Representatives") who need to know such information for the purposes of carrying out the party's obligations under this contract, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations in this clause 10.8. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and
- (b) as may be required by law, court order or any governmental or regulatory authority.
- (iii) Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this contract are granted to the other party or to be implied from this contract. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.
- 10.9 Neither party may assign or transfer or sub-contract any of its rights, benefits or obligations under this contract without the prior written consent of the other party.
- 10.10 This contract constitutes the whole agreement and understanding of the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this contract.





## Disclaimer

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