

PURCHASING TERMS AND CONDITIONS (these "Terms and Conditions")

1 DEFINITIONS AND INTERPRETATION

1.1 The following definitions and rules of interpretation apply in this Contract, unless the context requires otherwise.

1.2 Definitions:

Applicable Laws: means all applicable laws, byelaws, regulations and codes of practice in the territory in which the Supplier or the Purchaser is established or operates from time to time.

Business Day: means any day other than: (i) a Saturday; (ii) a Sunday; (iii) a day which is a bank holiday in England (as set out on <https://www.gov.uk/bank-holidays> for bank holidays in England); or (iv) a day when the Purchaser is not open for business.

Confidential Information: means any information in any form or medium obtained by or on behalf of one Party from or on behalf of the other Party in relation to this Contract which is expressly marked as confidential or which a reasonable person would reasonably consider to be confidential whether disclosed or obtained before, on or after the date of this Contract together with any reproductions of such information or any part of this information (and the Purchaser's "Confidential Information" shall include the Data and any Materials provided by the Purchaser to the Supplier and any Materials which are specifically created, made, designed, devised, adapted, discovered or invented by the Supplier for the Purchaser).

Contract: means these Terms and Conditions and any relevant terms of any applicable Long Term Agreement (if any), together with the relevant Order and any document referred to in these Terms and Conditions or the Order or the Long Term Agreement.

Data: means any data used in relation to the Purchaser or its customers, clients, Representatives or other suppliers, including data provided or made available by the Purchaser to the Supplier, or otherwise discovered by the Supplier, in relation to this Contract.

Fees: the fees payable by the Purchaser to the Supplier for the supply by the Supplier of the Goods as stipulated in the relevant Order.

Goods: means any goods provided or to be provided by the Supplier to the Purchaser pursuant to this Contract, as may be more particularly described in the Order (or any Long Term Agreement).

Intellectual Property Rights: means copyright and related rights, trade marks and service marks, trade names and domain names, rights under licences, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, patents, rights to inventions, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Long Term Agreement: means any written agreement between the Parties, governing the long-term relationship concerning the supply of goods by the Supplier to the Purchaser.

Materials: means all materials of any nature, including works of authorship, inventions, creations, diagrams, models, drawings, designs, processes, systems, methodologies, charts, flowcharts, catalogues, descriptions, products, documents, brochures, notes, records, results, reports, ideas, concepts, discoveries, know-how, information, data, databases, research, lists, logos, images, plans, specifications, manuals, deliverables, software (whether in object code or source code), routines, algorithms and tools.

Normal Working Hours: means the hours of 9am to 5pm local time in London on a Business Day, or as may be reasonably stipulated by the Purchaser to the Supplier from time to time.

Order: means any written document (including any which may be stated to be a "purchase order") provided by the Purchaser to the Supplier containing the specific information relating to the particular goods supplied or to be supplied by the Supplier to the Purchaser, and which document shall either be: (a) expressly agreed in writing by both Parties; or (b) supplied by the Purchaser to the Supplier and clearly intended to be an order for goods from the Purchaser.

Party: means either the Purchaser or the Supplier.

Policies: means any waste electrical and electronic equipment, restriction of hazardous substances, health and safety, bribery and anti-corruption, prevention of facilitation of tax evasion, anti-slavery, equality, ethical working and security or other policies set out in www.focus-sb.co.uk or otherwise reasonably required by the Purchaser, or agreed in writing between the Parties from time to time (such agreement not to be unreasonably withheld or delayed).

Purchaser: means Focus SB Limited, a company registered in England and Wales under number 04113926 whose registered office is at Napier Road, Castleham Industrial Estate, St. Leonards On Sea, East Sussex, TN38 9NY.

Purchaser Site: means the site where the Purchaser is based, or such other site as the Purchaser stipulates for delivery of the Goods in any Order (or as may be stipulated in any Long Term Agreement).

Regulatory Authority: means a duly constituted regulatory authority with competence to issue any permission, approval or consent for the manufacture and supply of the Goods or the distribution, marketing and sale of the Goods in the territory of manufacturer or end-sale, or any other issuing regulatory authority relevant to the Supplier and/or the Purchaser in respect of the Goods.

Representatives: means directors, officers, employees, consultants or contractors, agents or other representatives.

Specification: means any specification for the Goods which is stipulated in the relevant Order or any Long Term Agreement, including any specified size, grade or tolerance, and including as may be more particularly set out in any published specification of the manufacturer of such Goods.

Supplier: means the supplier of goods to the Purchaser whose details may be set out in the Purchaser's order (or any long term agreement between that supplier and the Purchaser).

Supplier Site: means the site where the Supplier is based, or such other site as agreed between the Parties in writing for manufacture of the Goods (or as may be stipulated in any Long Term Agreement).

- 1.3 References to **Clauses** are to clauses of these Terms and Conditions.
- 1.4 Headings are inserted for convenience only and shall not affect the interpretation or construction of this Contract.
- 1.5 Words imparting the singular shall include the plural and vice versa.
- 1.6 Words imparting a gender shall include the other gender and the neutral and references to **persons** shall include an individual, company, corporation, firm, partnership, trust, association, government or local authority department or other authority or body (whether corporate or unincorporated).
- 1.7 References to **written** or **in writing** includes in electronic form and similar means of communication.
- 1.8 The words **include** or **including** or **in particular** or like words or expressions shall not be interpreted as limiting the generality of any foregoing words and shall mean without limitation.
- 1.9 Any obligation in this Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce to that thing being done.
- 1.10 References to any statute or statutory provision shall include any subordinate legislation made under it, any provision which it has modified or re-enacted (whether with or without modification) and any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

2 CONTRACT

- 2.1 The terms of this Contract apply to the exclusion of any terms and conditions submitted, proposed or stipulated by the Supplier in whatever form and at whatever time. These Terms and Conditions apply to all Goods.
- 2.2 Save as expressly provided herein, this Contract shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties preceding the date of this Contract and in any way relating to the subject matter of this Contract. Nothing excludes or limits the liability of either Party for fraud.
- 2.3 This Contract constitutes the whole agreement and understanding of the Parties as to its subject matter and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to herein.
- 2.4 This Contract shall be legally formed and the Parties shall be legally bound when the Supplier communicates to the Purchaser the Supplier's agreement to supply the relevant Goods in accordance with the terms of the Order (as may be varied, before the Supplier's agreement, by the Purchaser in writing). Submission of an Order by the Purchaser to the Supplier shall be deemed to be an offer by the Purchaser to purchase or obtain Goods subject to these Terms and Conditions. The Supplier may accept the Order by written acceptance or, in any event, delivering the Goods shall constitute unqualified acceptance by the Supplier of the Order and these Terms and Conditions.
- 2.5 Except as expressly provided otherwise in this Contract, no change to this Contract shall be binding unless it is agreed in writing by both Parties.
- 2.6 In the event of any conflict between the provisions of these Terms and Conditions and the provisions of the rest of this Contract, then the following order of precedence shall apply:
 - 2.6.1 any Long Term Agreement (including any document incorporated into or referred to in the Long Term Agreement); which prevails over
 - 2.6.2 the Order; which prevails over
 - 2.6.3 these Terms and Conditions; which prevails over
 - 2.6.4 any other document.

2.7 If the Supplier provides the Purchaser with a quotation, order confirmation or any other document, such document shall be purely for the Supplier's administrative purposes only and shall not form part of this Contract.

2.8 Each Order constitutes a separate contract. There may be more than one contract between the Parties in force at the same time as this Contract.

3 GOODS

3.1 The Supplier warrants that:

3.1.1 unless otherwise set out in the Order, for 24 months from delivery by the Purchaser to its own customer, the Goods shall be free from material defects and shall conform to the Specification, or such longer term as the suppliers normal warranty allows.

3.1.2 the Goods shall conform in all respects to the relevant provisions of the Sale of Goods Act 1979 and with all other statutory and legal requirements;

3.1.3 the Goods shall be without fault;

3.1.4 the Goods shall not be "defective" within the meaning of the Consumer Protection Act 1987 and shall be safe to use;

3.1.5 the Goods shall, when used with or incorporated into other products which are reasonably foreseeable that the Purchaser may use or make available to its customers or any third party, not cause those other products to be "defective" within the meaning of the Consumer Protection Act 1987 or unsafe to use;

3.1.6 the Goods shall conform in all respects to the Order and any Long Term Agreement (including the Specification and any stated quantity or amount) and all samples provided or given by the Purchaser or the Supplier, and all written descriptions published by or on behalf of the Supplier (whether specifically to the Purchaser or generally) in respect of the Goods;

3.1.7 the Goods shall comply with all relevant British Standards and UK safety standards and any compulsory standards for the relevant type or purpose of the Goods;

3.1.8 the Goods shall be capable of any standard as may be specified in this Contract or otherwise agreed in writing between the Parties;

3.1.9 the Goods shall be of excellent quality, material and workmanship;

3.1.10 the Goods shall be packaged and labelled in a manner appropriate to the type of the Goods, and appropriate to the risks with respect to any Goods which are or contain hazardous substances or parts; appropriate for agreed shipping

3.1.11 the Goods shall be supplied with any documentation or guidance required to use or operate the Goods, where relevant, which includes where the Goods are machinery or equipment or computer hardware or software; and

3.1.12 the Goods and the intended use of them by the Purchaser's customers or any third party shall:

a) conform in all respects with all applicable laws, rules, regulations, bye-laws and codes of practice applicable in the territory of manufacture, the territory of destination in which the Purchaser or the Purchaser Site is based and the territory of anticipated use;

b) not infringe the privacy rights or Intellectual Property Rights of any third party; and

c) not contain any material detrimental to the Purchaser or its staff or any anticipated user (assuming that the Goods are correctly handled by such persons).

3.2 The Supplier shall:

3.2.1 before delivery of the Goods, use adequate facilities for performing its activities under this Contract, including the manufacture and storage of the Goods;

3.2.2 manufacture and supply the Goods in a professional manner and with the care, skill and diligence required in accordance with best practice and standards prevailing in the Supplier's industry;

3.2.3 ensure that all people involved with the sale, supply, importation, manufacture, assembly, storage and delivery of the Goods are fully trained and supervised and qualified to undertake their work;

3.2.4 observe all Applicable Laws in respect of the manufacture, sale, supply, storage, packaging and the transportation of the Goods from the Supplier to the Purchaser's nominated delivery address, including the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 and the Waste Electrical and Electronic Equipment Regulations 2013;

3.2.5 comply with the OECD Due Diligence Guidance for responsible supply chains of minerals from conflict-affected and high-risk areas;

3.2.6 comply with the Policies in performing its obligations under or in relation to this Contract;

3.2.7 obtain and pay for and at all times maintain and comply with and conform to, all necessary or desirable licences, authorisations, approvals, consents, permissions and certificates of origin required for the manufacture, storage, sale and supply of the Goods as are applicable at the Supplier Site, or otherwise required by law or the Purchaser;

3.2.8 on or before delivery of the Goods to the Purchaser check the Goods in accordance with its regulatory requirements and give adequate advice and information to the Purchaser as to the handling and storage of the Goods;

3.2.9 notwithstanding the provisions of Clause 3.2.8 allow the Purchaser's Representatives, during Normal Working Hours, access to inspect the manufacturing and storage facilities of the Supplier, including the Supplier Site and the Goods themselves or similar goods, relevant to the Goods;

3.2.10 make the Supplier's Representatives available, at all reasonable times and upon reasonable prior written warning, to the Purchaser for the purposes of consultation and advice relating to this Contract and the Goods, and attend meetings and telephone calls with the Purchaser's Representatives as may be necessary for the performance of its duties under this Contract;

3.2.11 provide any information and support that may reasonably be requested by the Purchaser to enable the Purchaser to discharge its duties or exercise its rights under this Contract promptly and efficiently;

3.2.12 at all times conduct its business in a manner that will reflect favourably on the Goods and on the good name and reputation of the Purchaser and not participate in any illegal, deceptive, misleading or unethical practices including disparagement of the Goods or the Purchaser; and

3.2.13 comply with all reasonable directions, requests, instructions and requirements of the Purchaser, including the requirements of any Regulatory Authority and the Purchaser's customers in relation to the provision of the Goods, including providing any information, data, documents, access and right to inspect, in whatever form reasonably required by the Purchaser including so that the Purchaser can comply with its own legal and/or regulatory obligations.

3.3 Where the Goods are dispatched from the same country as the Purchaser Site, the Supplier shall deliver the Goods carriage paid to the Purchaser at the address specified in the Order or Long Term Agreement or otherwise agreed between the Parties in writing (inclusive of all charges for packaging, packing, shipping, insurance, carriage and delivery). Where the Goods are dispatched from a different country than that of the Purchaser Site, unless stipulated otherwise in this Contract, delivery shall be FOB (Incoterms 2020), but to the extent that there is any conflict between Incoterms 2020 and any other provision of this Contract, the relevant provision of this Contract shall prevail.

3.4 The Supplier shall deliver the Goods to the Purchaser during Normal Working Hours on or before any delivery date stated on the Order, or at such time as otherwise agreed between the Parties. The Purchaser, or a third party nominated to take delivery on its behalf, may refuse to accept deliveries outside of Normal Working Hours. Time for delivery shall be of the essence.

3.5 If the Goods are not delivered to the Purchaser on or before any agreed delivery date, then in addition to the remedies listed at Clause 5.1 the Purchaser may opt to reduce the Fees payable for the late Goods by way of liquidated damages by 5% of the total Fees agreed to be payable for those Goods for each part or full week that the Goods are late, up to a maximum reduction of 25% (but without prejudice to the Purchaser's other rights and remedies, under this Contract, at law or otherwise).

3.6 The Supplier shall off-load the Goods at the place and in the manner directed by the Purchaser or the Purchaser's Representatives.

3.7 All Goods shall be subject to the Purchaser's testing and inspection. Without prejudice to any rights that the Purchaser may have (whether under this Contract, under statute or howsoever) in relation to the delivered Goods, the Purchaser shall not be deemed to have accepted any Goods until after such testing and inspection has been completed to the Purchaser's satisfaction. Payment of any Fees by the Purchaser (in whole or in part) shall not constitute deemed acceptance.

3.8 The Supplier shall package, store and deliver the Goods in the form and manner stipulated in accordance with all Specifications and any other instructions provided by the Purchaser from time to time, including (to the extent applicable) such that delivery of the Goods conform in all respects with the Purchaser's reasonable delivery instructions made known to the Supplier by the Purchaser, including in relation to requirements for labelling, secure packaging, quantity limitations and/or advanced storage requirements. In addition to any specific instructions of the Purchaser, the Supplier shall ensure that such packaging and storage protects the Goods against infestation, damage and/or other contamination until the Goods are opened and protects those handling the Goods from harm and wherever possible the supplier should use recycled packing materials. The Supplier shall procure that any third party acting on its behalf complies with the obligations of the Supplier pursuant to this Clause 3.8.

- 3.9 Subject to Clause 3.8, the Supplier shall securely package the Goods in the packages of a type normally used by similar suppliers for the same or similar goods and so as to ensure that the Goods reach their final intended destination without having been damaged or opened early.
- 3.10 The Supplier shall show the following details on the outside of every package (where applicable for the type of Goods):
- 3.10.1 description of Goods;
- 3.10.2 quantity in the package;
- 3.10.3 any special direction for storage and opening;
- 3.10.4 any expiry date of any contents;
- 3.10.5 advice and packing note quoting any Order number;
- 3.10.6 any markings required for legislation relevant to the product;
- 3.10.7 manufacturer's mark or batch number; and
- 3.10.8 name and address of the Supplier.
- 3.11 The Supplier shall ensure that a delivery note accompanies each delivery of the Goods, confirming the date, quantity and type of Goods delivered. The Supplier shall further include such other information as accords with the Purchaser's delivery instructions made known to the Supplier by the Purchaser from time to time.
- 3.12 The Supplier shall not allow any unauthorised people to have access to any Goods or part-made Goods which are to be provided to the Purchaser.
- 3.13 The Supplier shall ensure that, if the Supplier or its Representatives access any part of the Purchaser Site, the Supplier and the Supplier's agents shall take good care of them, shall not damage them and restore them, and shall leave them clean and tidy.
- 3.14 The Supplier shall ensure that at all times before delivery the Goods being made or that have been made are:
- 3.14.1 adequately segregated from material deemed to be rejected material;
- 3.14.2 adequately segregated from other goods; and
- 3.14.3 protected (including with all sufficient packaging) from infestation, damage and/or other contamination.
- 3.15 The Supplier is responsible for ensuring that the Goods comply with any applicable government export or import control laws and regulations and supply certification as proof of conformity.
- 3.16 Unless set out in the Order or the Purchaser otherwise agrees in writing, the Supplier shall not deliver Goods in an Order by instalments. Where the Purchaser agrees to accept delivery by instalments, failure by the Supplier to deliver any one instalment in accordance with this Contract shall entitle the Purchaser at its option to treat the whole Contract as repudiated.
- 3.17 If the Goods are delivered to the Purchaser in excess of the quantities ordered, the Purchaser shall not be bound to pay for the excess.
- 3.18 Risk in the Goods shall remain with the Supplier and shall pass to the Purchaser on completion of delivery (including off-loading and stacking), unless the Parties are in different countries in which case risk shall pass as per delivery FOB (Incoterms 2020), unless otherwise agreed on the purchase order or in writing
- 3.19 Without prejudice to any right of rejection which the Purchaser may be entitled to exercise, equitable and legal title in the Goods shall pass to the Purchaser upon whichever is the earlier of payment in part or full or delivery. Title to rejected Goods shall revert back to the Supplier upon the later of receipt by the Supplier of the rejected Goods and full repayment to the Purchaser of the Fees in respect of the rejected Goods.
- 3.20 The Supplier shall immediately advise the Purchaser with as much notice as possible if it becomes aware of any circumstances that may cause delay, disruption or failure to deliver the Goods and the Supplier shall use all reasonable endeavours to mitigate against such problems.
- 4 THE PURCHASER'S ADDITIONAL OBLIGATIONS**
- 4.1 The Purchaser shall use its reasonable endeavours to:
- 4.1.1 provide in a timely manner all information reasonably required by the Supplier for the Supplier to perform its obligations under this Contract;
- 4.1.2 prepare the Purchaser Site, if applicable, for receipt and provision of the Goods;
- 4.1.3 inform the Supplier of any rules and regulations relevant to the Supplier's provision of Goods at the Purchaser Site and any timings for provision of the Goods;
- 4.1.4 where relevant, ensure that Purchaser's Representatives or its customers are ready and present at the Purchaser Site at any time agreed by the Purchaser to enable the Supplier to perform its obligations under this Contract; and

- 4.1.5 co-operate with, and be available at all reasonable times for discussion and meetings with, the Supplier and to enable the Supplier to promptly perform its obligations under this Contract.

5 QUALITY ISSUES AND INDEMNITY

- 5.1 Without prejudice to any other right or remedy which the Purchaser may have whether under this Contract, at law or otherwise, if the Purchaser reasonably believes that any Goods which have been or should have been supplied are not or were not supplied in accordance with, or that the Supplier has failed to comply in any way with, any of the terms of this Contract or any contract between the Parties (including as to timing or quality), the Purchaser shall be entitled to exercise any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted or already received by the Purchaser:
- 5.1.1 to reject the Goods or a whole batch or instalment of the Goods (in whole or in part, irrespective of whether some of the rejected Goods comply with this Contract) on the basis that a full refund for the rejected Goods shall be paid forthwith by the Supplier, and under such circumstances:
- (a) the Supplier shall at its own expense within seven days from the date of receipt of notice of rejection (or such other period as is agreed in writing between the Parties), remove the rejected Goods; and
- (b) if the rejected Goods have not been removed within that period, the Purchaser may return the Goods to the Supplier or destroy the rejected Goods at the Supplier's risk and expense;
- 5.1.2 to rescind this Contract (in whole or in part);
- 5.1.3 at the Purchaser's option to give the Supplier the opportunity within a reasonable period stipulated by the Purchaser at the Supplier's expense either to remedy any defect in the Goods or to supply or provide replacement Goods and carry out any other necessary work to ensure that the terms of this Contract are fulfilled;
- 5.1.4 to refuse to accept any further deliveries or provision of the Goods (under this Contract or any contract) but without any liability of the Purchaser to the Supplier;
- 5.1.5 to carry out at the Supplier's expense any work necessary to make the Goods comply with this Contract;
- 5.1.6 to recover from the Supplier any expenditure reasonably incurred by the Purchaser in obtaining the Goods or related goods other than from the Supplier; and
- 5.1.7 to claim such losses and damages as may have been sustained in consequence of the Supplier's breaches of this Contract (including liabilities to the Purchaser's customers, the Purchaser's internal costs, downtime, cost of removal or destruction, and any storage costs and additional expenditure or liability incurred by the Purchaser in obtaining replacement goods or in delaying manufacture or in supplying or delays in supplying or not supplying its customers).
- 5.2 The Purchaser may (without prejudice to any other rights or remedies, whether under this Contract, at law or otherwise) require the removal of any individuals from the Purchaser Site upon the Purchaser's reasonable request.
- 5.3 The Supplier shall indemnify and keep fully indemnified the Purchaser against any and all direct, indirect or consequential losses, liabilities, demands, claims, proceedings, damages, costs, charges, and expenses (including the Purchaser's liability to its customers or third parties) suffered by, incurred by, paid by or awarded against, the Purchaser in respect of:
- 5.3.1 any late or defective or unsafe Goods, workmanship, quality or materials;
- 5.3.2 any infringement or alleged infringement of any Intellectual Property Rights of any nature (whether registrable or not) anywhere in the world in any way relating to the use, manufacture or supply of Goods; or
- 5.3.3 any direct or indirect breach or negligent performance or failure or delay in performance of this Contract by the Supplier or its Representatives.
- 6 INSURANCE**
- 6.1 During the term of this Contract and for a minimum of seven years after its termination or expiry, the Supplier shall take out and maintain in full force and effect at its own expense and cost (and not do anything to adversely affect the effectiveness of) insurance operating on a worldwide basis with a well-established insurance company of repute to cover the Supplier's professional indemnity, product liability and public liability liabilities under or in connection with this Contract with a limit of indemnity of not less than £5,000,000 for each and every claim.
- 6.2 The Supplier shall promptly inform the Purchaser if it becomes aware of any circumstance under which the insurance referred to in this Clause 6 may cease to be valid.

7 PRODUCT RECALLS

- 7.1 Each Party shall without delay inform the other Party in writing of any complaints or safety issue of which it becomes aware concerning the Goods and in accordance with timeframes required by Applicable Laws.
- 7.2 If any Regulatory Authority requires the recall of any Goods, or if either Party reasonably deems it necessary to initiate a voluntary recall of any Goods, the Party so contacted by the Regulatory Authority or aware of or initiating the recall shall urgently (and in any event within one Business Day) notify the other Party and consult with the other Party regarding the timely compliance with all Applicable Laws.
- 7.3 The Purchaser shall promptly inform its affected customers in writing of the recall.
- 7.4 The Supplier shall have the responsibility to manage a recall of Goods and determine the scope of such recall. The Purchaser shall fully co-operate with the Supplier's decisions on any such recall. All communications with consumers, trade, press and others on any such recall shall be made by the Purchaser on behalf of the Supplier.
- 7.5 The Supplier shall have the responsibility to handle compensation claims in respect of Goods, except that subject to the Purchaser's agreement the Supplier may elect to pass the handling of the compensation claims to the Purchaser (the Purchaser's reasonable costs and expenses to be paid by the Supplier), but whoever deals with fronting the compensation claims handling shall consult with the other Party.
- 7.6 The Supplier shall be solely responsible for any and all costs (both direct and indirect) of any recalls of Goods incurred by the Parties, and the Supplier shall pay the Purchaser for all such costs incurred by the Purchaser upon demand.
- 7.7 The Parties shall in any case co-operate for all the recall procedures (at the Supplier's cost).

8 CONFIDENTIALITY AND DATA PROTECTION

- 8.1 Each Party shall keep and procure to be kept secret and confidential the Confidential Information of the other Party and shall not use nor disclose the same save:
- 8.1.1 for the purposes of the proper performance of its obligations or exercise of its rights under this Contract;
- 8.1.2 as otherwise permitted by this Contract; or
- 8.1.3 with the prior written consent of the other Party.
- 8.2 Where one Party discloses Confidential Information of the other Party to its Representative, supplier, customer, client, professional adviser or insurer, it shall do so subject to obligations equivalent to those set out in this Clause 8. Each Party shall use its best endeavours to ensure that any such Representative, supplier, customer, client, professional adviser or insurer complies with such obligations.
- 8.3 The obligations of confidentiality in this Clause 8 shall not extend to any matter which either Party can show:
- 8.3.1 was independently developed or discovered by or on behalf of it without access to the other Party's Confidential Information and independently of this Contract;
- 8.3.2 was or becomes legitimately in the public domain other than by act or default of it or of anyone to whom it disclosed the other Party's Confidential Information; or
- 8.3.3 was rightfully received by it without restriction on disclosure or use from a third party who had no duty of confidentiality to the other Party in respect of it.
- 8.4 If either Party is required to disclose the Confidential Information of the other Party under any Applicable Law, or by order of a court or governmental body or authority of any applicable Regulatory Authority or competent jurisdiction, then the Party so required may disclose the Confidential Information to the extent required but shall, prior to any disclosure where practicable, give the other Party as much notice thereof as practicable and consult with the other Party and, at the other Party's request and cost, fully co-operate with and assist that other Party in opposing any such disclosure.
- 8.5 Each Party shall at all times:
- 8.5.1 only reproduce the other Party's Confidential Information to the extent strictly necessary for the purpose permitted under this Contract;
- 8.5.2 ensure that the other Party's Confidential Information in its possession bears the other Party's proprietary notices, which it shall not remove or obscure;
- 8.5.3 use its best endeavours to ensure that no unauthorised person discovers any of the other Party's Confidential Information as a result of its acts or omissions;
- 8.5.4 adopt, retain and keep updated adequate procedures and physical security measures which protect the Confidential Information of the

other Party from inadvertent disclosure or release to unauthorised persons;

- 8.5.5 hold the other Party's Confidential Information in strict confidence and in any event with no less standard of confidentiality than that which it applies to its own confidential information;
- 8.5.6 keep separate the other Party's Confidential Information, all information generated based on it and all media on which the other Party's Confidential Information is recorded, from all other documents and records in its possession or under its control;
- 8.5.7 ensure that each person to whom it discloses the other Party's Confidential Information has first agreed to keep that Confidential Information strictly confidential (or is otherwise under a professional obligation to keep it strictly confidential) on terms no less strict than under this Clause 8 and shall use its best endeavours to enforce such obligations; and
- 8.5.8 inform the other Party upon becoming aware of any improper or wrongful or unauthorised use of the other Party's Confidential Information, and shall co-operate with the other Party in every reasonable way to help the other Party regain possession of the other Party's Confidential Information and prevent its further use.
- 8.6 Neither Party shall make any announcement of any kind in respect of the subject matter of this Contract except with the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) or as is required by law.
- 8.7 In performing this Contract, each Party shall comply with all applicable data protection legislation.
- 8.8 The obligations of this Clause 8 shall continue after termination or expiry of this Contract for whatever reason.

9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Supplier warrants that it owns or has sufficient licence in the Intellectual Property Rights in the Goods so as to supply the Goods to the Purchaser for use of the Goods by the Purchaser or by subsequent customers or users in the ways envisaged by this Contract.
- 9.2 Unless specifically agreed by the Purchaser in writing, as between the Parties, the Supplier acknowledges that the Purchaser (or the Purchaser's licensors) shall own all Intellectual Property Rights in any Goods and Materials, in whatever form and on whatever media, to the extent that they are specifically created, made, designed, devised, adapted, discovered or invented by the Supplier for the Purchaser or otherwise provided to the Supplier by the Purchaser. The Supplier hereby assigns to the Purchaser, by way of present and future assignment, absolutely with full title guarantee all such Intellectual Property Rights owned by the Supplier, for the full term of such rights and all renewals and extensions, together with all accrued rights of action. The Supplier shall deliver up all such Goods and Materials in whatever form and on whatever media reasonably required by the Purchaser.
- 9.3 The Supplier shall have a limited licence to use such Goods and Materials described in Clause 9.2 to the extent necessary for performing its obligations pursuant to this Contract; such licence shall be non-transferable and non-sublicensable unless the Purchaser gives its prior written consent.
- 9.4 To the extent that the Supplier's supply of any Goods or Materials involves any part of the Goods, Materials, names or domain names not specifically created, made, designed, devised, adapted, discovered or invented by the Supplier for the Purchaser or otherwise provided to the Supplier by the Purchaser, the Supplier hereby grants to the Purchaser for use by the Purchaser, its assignees and licensees, and their respective Representatives, customers and clients, an irrevocable, worldwide, royalty-free, perpetual, transferable, sub-licensable licence to use such part of the Goods, Materials, names or domain names.
- 9.5 The Supplier acknowledges that, as between the Parties, the Purchaser (together with the Purchaser's licensors) owns all Intellectual Property Rights in the Data.
- 9.6 The Supplier acknowledges that all tooling, moulding, gauges, dies, jigs, fixtures, plates, cylinders, rollers, equipment and/or patterns which the Supplier makes, purchases or requires specifically for the manufacture of Goods for the Purchaser shall be used solely for the manufacture of the Goods for the Purchaser and not for any other purpose or any other customer. The Supplier shall keep all such tooling, moulding, gauges, dies, jigs, fixtures, plates, cylinders, rollers, equipment and/or patterns in good repair and condition, and if the Purchaser requires to buy any of them the Supplier shall promptly sell them to the Purchaser at market price.

10 BRIBERY AND CORRUPTION

- 10.1 The Parties both agree that it is important that they comply with all relevant Applicable Laws relating to anti-bribery and anti-corruption.
- 10.2 The Supplier shall:
- 10.2.1 fully adhere to all of the Policies relating to anti-bribery and anti-corruption policies and procedures;
- 10.2.2 maintain and fully adhere to its own anti-bribery and anti-corruption policies and procedures based on its own assessed risks; and

- 10.2.3 ensure that all persons associated with the Supplier (including the Supplier's Representatives) fully adhere to the policies and procedures described in Clauses 10.2.1 and 10.2.2 and comply with this Clause 10.
- 10.3 The Supplier warrants that it and its Representatives have not offered, promised, given, paid, requested, agreed to receive, received or accepted any bribe, or anything that at law could be considered to be a bribe, at any time (whether or not in respect of its relationship with the Purchaser).
- 10.4 The Supplier further undertakes that it shall not at any time offer, promise, give, pay, request, agree to receive, receive or accept any bribe, or anything that at law could be considered to be a bribe, at any time (whether or not in respect of its relationship with the Purchaser).
- 10.5 The Supplier shall in any event use all reasonable endeavours to prohibit and prevent any bribe, or anything that at law could be considered to be a bribe, being offered, promised, given, paid, requested, agreed to be received, received or accepted by any person acting, directly or indirectly, on behalf of the Supplier or the Purchaser.
- 10.6 The Supplier shall inform the Purchaser immediately and with full details upon reaching any suspicion that:
- 10.6.1 a bribe has been offered, promised, given, paid, requested, agreed to be received, received, or accepted at any time by any person acting, directly or indirectly, on behalf of the Supplier, the Purchaser; or
- 10.6.2 any policies or procedures referred to in this Clause 10 have not been complied with; or
- 10.6.3 any Applicable Laws relating to anti-bribery or anti-corruption have not been complied with.
- 10.7 Without prejudice to the Purchaser's rights to terminate this Contract, the Purchaser may in any event or alternatively require that any person whom it reasonably suspects is causing the Supplier to breach this Clause 10 is removed from involvement with this Contract, and the Supplier shall immediately comply with such requirement.
- 10.8 The Supplier agrees to indemnify and keep indemnified the Purchaser against all liabilities, losses, claims, demands, actions, judgments, awards, damages, costs, expenses and fines (including legal costs, charges and expenses) suffered or incurred by the Purchaser or any of the Purchaser's Representative as a result of any breach by the Supplier of this Clause 10.
- 11 ANTI-FACILITATION OF TAX EVASION**
- 11.1 The Supplier shall, and shall procure that the Supplier's Representatives shall:
- 11.1.1 not engage in any activity, practice or conduct which would constitute either:
- (a) a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act; or
- (b) a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;
- 11.1.2 fully adhere to all of the Policies relating to anti-facilitation of tax evasion;
- 11.1.3 maintain and fully adhere to its own policies and procedures as are reasonable in all the circumstances to prevent the facilitation of tax evasion by another person (including the Supplier's Representatives), in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017;
- 11.1.4 promptly report to the Purchaser any request or demand received by the Supplier or the Supplier's Representatives from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017 in connection with the performance of this Contract; and
- 11.1.5 ensure that all persons associated with the Supplier (including the Supplier's Representatives) fully adhere to the policies and procedures described in Clauses 11.1.2 and 11.1.4 and comply with this Clause 11.
- 11.2 Without prejudice to the Purchaser's rights to terminate this Contract, the Purchaser may in any event or alternatively require that any person whom it reasonably suspects is causing the Supplier to breach this Clause 11 is removed from involvement with this Contract, and the Supplier shall immediately comply with such requirement.
- 11.3 The Supplier agrees to indemnify and keep indemnified the Purchaser against all liabilities, losses, claims, demands, actions, judgments, awards, damages, costs, expenses and fines (including legal costs, charges and expenses) suffered or incurred by the Purchaser or any of the Purchaser's Representative as a result of any breach by the Supplier of this Clause 11.
- 12 ANTI-SLAVERY AND HUMAN TRAFFICKING**
- 12.1 The Supplier warrants that neither it nor any of its Representatives or subcontractors have been convicted of any offence involving slavery and human trafficking; nor have been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

- 12.2 In performing its obligations under this Contract, the Supplier shall:
- 12.2.1 comply with all Applicable Laws pertaining to anti-slavery and human trafficking from time to time in force including the Modern Slavery Act 2015;
- 12.2.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
- 12.2.3 include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this Clause 12;
- 12.2.4 inform the Purchaser immediately in writing if it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract;
- 12.2.5 inform the Purchaser if it becomes aware or has reason to believe that it, or any of its Representatives or subcontractors, have breached or potentially breached any of the Supplier's obligations under this Clause 12, such communication to set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations; and
- 12.2.6 maintain a complete set of records to trace the supply chain of all Goods provided to the Purchaser in connection with this Contract, and permit the Purchaser and its Representatives to inspect the Supplier's premises, records, and to meet the Supplier's Representatives to audit the Supplier's compliance with its obligations under this Clause 12.
- 12.3 Breach of this Clause 12 shall be deemed a material breach incapable of remedy under Clause 14.2.1.
- 13 FEES**
- 13.1 In consideration of obtaining the relevant Goods provided by the Supplier pursuant to this Contract, the Purchaser shall pay to the Supplier the relevant Fees as set out in the Order or any Long Term Agreement.
- 13.2 Unless the Order or any Long Term Agreement provides to the contrary:
- 13.2.1 the Supplier shall provide the Purchaser with a proper invoice for the Fees showing VAT separately, after the Purchaser has received the Goods in full conformance to this Contract;
- 13.2.2 the Supplier shall provide a separate invoice for each Order; and
- 13.2.3 the Purchaser shall pay the Supplier for all undisputed Fees within 30 days of the end of the month in which the Purchaser receives the Supplier's proper invoice with any relevant accompanying documentation reasonably requested by the Purchaser.
- 13.3 Unless otherwise agreed by the Parties in writing or stipulated in the relevant Order, the Purchaser shall make all payments to the Supplier in the currency in force in England from time to time to a bank account designated by the Supplier on its proper invoice or such other payment method reasonably required by the Supplier from time to time.
- 13.4 Unless otherwise set out in the Order or any Long Term Agreement, all sums due as set out in the Order or Long Term Agreement are inclusive of any delivery charges, VAT, sales, import and export taxes, customs and duties.
- 13.5 Unless otherwise agreed specifically in this Contract or by the Parties in writing, the Fees shall be a fixed amount and shall not be subject to any change from the amount stated in the Order or Long Term Agreement and shall include all costs and expenses and no further costs or expenses shall be chargeable in addition.
- 13.6 If the Purchaser is late in paying any sums due under this Contract or any other contract between the Parties, the Supplier may (without prejudice to any other right or remedy available to it whether under this Contract or by any statute, regulation or bye-law), subject to the Supplier giving the Purchaser not less than ten Business Days' notice, charge interest on the amount due but unpaid at an annual rate of interest of three per cent above the base rate of the National Westminster Bank from time to time, such interest to run from day to day and to be compounded monthly.
- 14 TERMINATION**
- 14.1 This Contract shall commence on the date on which this Contract is entered into and, unless terminated earlier in accordance with the termination provisions under this Contract, shall continue in full force and effect until the latest of:
- 14.1.1 conclusion of the provision of the Goods in accordance with the Order; or
- 14.1.2 conclusion of payment of all sums due under this Contract in cleared funds.
- 14.2 Either Party may terminate this Contract immediately by notice to the other Party if:
- 14.2.1 the other Party is in material breach of any of its obligations under this Contract or any other contract between the Parties which is incapable of remedy;

- 14.2.2 the other Party fails to remedy, where capable of remedy, any material breach of any of its obligations under this Contract or any other contract between the Parties after having been required in writing to remedy such breach within a period of no less than 30 days;
- 14.2.3 the other Party is in persistent breach of any of its obligations under this Contract or any other contract between the Parties; or
- 14.2.4 the other Party gives notice to any of its creditors that it has suspended or is about to suspend payment or if it is or shall be unable to pay its debts as they come due, or enters into any compromise or arrangement with any of its creditors (other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party), or an order is made or a resolution is passed for the winding-up of the other Party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other Party or a receiver or manager or administrative receiver is appointed in respect of all or any of the other Party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver or manager or administrative receiver or administrator or which entitle the court to make a winding-up or bankruptcy order or the other Party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.
- 14.3 Termination or expiry of this Contract shall be without prejudice to any accrued rights or remedies of either Party.
- 14.4 Termination or expiry of this Contract will not affect the coming into force or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination or expiry.
- 14.5 Upon termination or expiry of this Contract for any reason, the owner of Confidential Information may at its option require the other Party to delete promptly all Confidential Information belonging to the Party requiring the action from any computer disks, tapes or other material in its possession or under its control or promptly deliver up or destroy materials and tangible items in its possession or under its control which contain any such Confidential Information. The relevant Party may require the other Party to provide a written declaration, signed by an officer or other authorised individual, stating that there has been full compliance with this Clause 14.5.
- 15 NOTICES**
- 15.1 Any notice required or authorised to be given under this Contract shall be in writing and served (a) by personal delivery or (b) (if being served within the UK) by recorded delivery or (c) by overnight commercially recognisable courier or (d) by email, in each case addressed to a director of the relevant Party at that Party's registered office address or at such other address or email address as is notified by the relevant Party to the other Party for this purpose from time to time or at the address or email of a director of the relevant Party last known to the other Party.
- 15.2 Any notice so given by recorded delivery or overnight commercially recognisable courier shall be deemed to have been served two Business Days after the same shall have been despatched and any notice so given by email shall be deemed to have been served at 10am local time of the recipient on the next Business Day following despatch. In proving such service, it shall be sufficient to prove that the letter or email was properly addressed and, as the case may be, despatched; and in the case of a notice given by email, it shall be sufficient to show that it was despatched in a legible and complete form to the correct email address without any error message, provided that a confirmation copy of the transmission is despatched within four Business Days to the recipient by one of the other methods of delivery of notice set out above. Failure to send a confirmation copy shall invalidate the service of notice by email.
- 16 ASSIGNMENT**
- 16.1 The Supplier shall not (and shall not purport to) assign, sub-license, subcontract, transfer, novate, charge or otherwise encumber, create any trust over or deal in any manner with this Contract or any of its rights, liabilities or obligations under this Contract without the prior written consent of the Purchaser.
- 16.2 If with such consent specified under Clause 16.1 the Supplier subcontracts any of its obligations to a subcontractor, it shall be and remain fully liable for the performance of any subcontractor so appointed and the Purchaser shall have no contractual relationship with any such sub-contractor.
- 17 GENERAL**
- 17.1 Unless a Party expressly states in writing that it is waiving a particular power, right or remedy in a particular stated instance, no failure or delay or omission by either Party in exercising any power, right or remedy under this Contract or at law shall operate as a waiver of such power, right or remedy; and no waiver in any particular instance shall extend to or affect any other or subsequent event or impair any powers, rights or remedies in respect of it or in any way modify or diminish that Party's other powers, rights or remedies under this Contract or at law.
- 17.2 If any Clause or other provision in this Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way affect any other Clause or provision or part of any Clause or provision, all of which shall remain in full force and effect.
- 17.3 The relationship of the Parties is that of independent contractors dealing at arm's length. Except as otherwise stated in this Contract, nothing in this Contract shall constitute the Parties as partners, joint ventures or co-owners, or constitute either Party as the agent, employee or representative of the other Party, or empower either Party to act for, bind or otherwise create or assume any obligation on behalf of the other Party, and neither Party shall hold itself out as having authority to do the same.
- 17.4 A person who is not a Party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other person.
- 17.5 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or its formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England.
- 17.6 If both Parties are domiciled in the European Union or the United Kingdom, then subject to Clause 17.7, the Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of or in connection with this Contract or its subject matter or its formation (including non-contractual disputes or claims).
- 17.7 If both Parties are domiciled in the European Union or the United Kingdom, but as a consequence of any change in national or international law, judgments of the courts of England shall not be automatically enforceable in the jurisdiction in which the Customer is located, or such a change in law is planned or reasonably foreseeable, Focus SB shall have the right to commence and pursue arbitration proceedings against the Customer under the LCIA Rules to settle any claim, dispute or matter of difference which may arise out of or in connection with this Contract or its formation (including non-contractual disputes or claims). The LCIA Rules are deemed to be incorporated by reference into this Clause 17.7. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English.
- 17.8 If one or more of the Parties is domiciled outside of the European Union and the United Kingdom, any claim, dispute or matter of difference which may arise out of or in connection with this Contract or its subject matter or its formation (including non-contractual disputes or claims) shall be exclusively referred to and finally resolved by arbitration under the LCIA Rules. Those Rules are deemed to be incorporated by reference into this Clause 17.8. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English.
- 17.9 All dealings, correspondence and contacts between the Parties shall be made or conducted in the English language.

Last updated July 2021