

CONDITIONS OF SALE AND SUPPLY
P B ASHER DIESEL INJECTION ENGINEERS LIMITED

1 INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions:

- 1.1 **“Business Day”**: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.2 **“Customer”** the person who purchases the Goods and/or Services from the Supplier.
- 1.3 **“Consumer”** an individual acting for purposes that are wholly or mainly outside that individual’s trade, business, craft or profession.
- 1.4 **“Contract”** the contract between the Supplier and the Customer for the sale and purchase of the Goods and/or supply of the Services, incorporating these terms.
- 1.5 **“Deliverables”** the deliverables, if any, set out in the Quotation to be provided to the Customer as part of the Services.
- 1.6 **“Force Majeure Event”** has the meaning given to it in clause 15.1.
- 1.7 **“Goods”** the goods supplied by the Supplier to the Customer, as set out in the Quotation.
- 1.8 **“Intellectual Property Rights”** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, 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.
- 1.9 **“Quotation”** the Supplier’s written quotation for the supply of goods and/or services (as applicable) to the Customer.
- 1.10 **“Supplier”** the PB Asher entity identified in the Quotation, being either:
 - 1.10.1 PB Asher Diesel Injection Engineers Limited (company number 03626404) whose registered office is at Fryern House, 125 Winchester Road, Chandlers Ford, Hampshire, England, SO53 2DR and whose principal place of business is at West Quay Road, Southampton, SO15 1AE; or
 - 1.10.2 PB Asher Ireland Ltd (company number 712742) whose registered office and principal place of business is at Unit 3d North Point House, North Point Business Park, New Mallow Road Cork, Co. Cork, Cork, Ireland.
- 1.11 **“Services”** the services, including the Deliverables, supplied by the Supplier to the Customer as specified in the Quotation.
- 1.12 The headings of these terms are for convenience only and shall not affect the interpretation.
- 1.13 A reference to **“writing”** or **“written”** excludes fax but includes email.
- 1.14 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.15 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time and a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time.

- 1.16 Any words following the terms “**including**”, “**include**”, “**in particular**”, “**for example**” or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.17 A reference to a “**company**” shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.18 A “**person**” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2 CONTRACT

- 2.1 These terms apply to the Quotation and Contract to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply) or which are implied by law, trade custom, practice or course of dealing. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these terms.
- 2.2 No variation to these terms or the Quotation shall be binding unless agreed in writing between the authorised representatives of the Customer and the Supplier.
- 2.3 A Quotation is valid for 30 days from its date.
- 2.4 A Quotation is an invitation to treat and not an offer. The Contract takes effect only once the Supplier confirms its acceptance of the Customer’s corresponding order. In the meantime, the Supplier has no liability for any order received from the Customer (whether a Quotation has been issued or not).
- 2.5 At its absolute discretion and without liability to the Customer, the Supplier may withdraw the Quotation at any time.
- 2.6 The Supplier’s employees or agents are not authorised to make any representations or warranties concerning the Goods, unless confirmed by the Supplier in writing and signed by a director. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations or warranties which are not so confirmed.
- 2.7 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 Supplier shall be subject to correction without any liability on the part of the Supplier.

3 SPECIFICATIONS

- 3.1 The quantity, quality and description of any specification for the Goods shall be those set out in the Quotation.
- 3.2 Notwithstanding that a sample of the Goods may have been exhibited to and inspected by the Customer, it is hereby agreed and acknowledged by the Customer that such sample was so exhibited and inspected solely to enable the Customer to judge for itself/himself the quality of the bulk and not so as to constitute as sale by sample.
- 3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Supplier in accordance with a specification submitted by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party’s Intellectual Property Rights arising out of or in connection with the Supplier’s use of that specification. This clause 3.3 shall survive termination of the Contract..
- 3.4 The Supplier reserves the right to make any changes to the specification of the Goods/Services which are required to conform with any applicable statutory or regulatory requirements or,

where Goods are to be supplied to the Supplier's specification, which do not materially affect their quality or performance.

3.5 The description of any specification for the Services shall be set out in the Quotation.

3.6 Any drawings or advertising produced by the Supplier and any illustrations contained in the Supplier's website, catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods or Services referred to in them. They shall not form part of the Contract nor have any contractual force.

4 CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

4.1.1 ensure the accuracy of any information (including any applicable specification and the contents of its order) supplied by it or on its behalf;

4.1.2 promptly co-operate with the Supplier in all matters relating to the supply of the Goods/Services;

4.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, machinery, equipment and other facilities as reasonably required by the Supplier to provide the Services;

4.1.4 prepare the Customer's premises for the supply of the Services;

4.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

4.1.6 comply with all applicable laws, including health and safety laws;

4.1.7 keep all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and

4.1.8 comply with any additional obligations set out in the Quotation.

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):

4.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and

4.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5 PRICE AND PAYMENT

5.1 The price of the Goods shall be the price set out in the Quotation or, where no price was quoted, or where the quoted price is no longer valid, the price listed in the Supplier's published list current at the date of the Supplier's acceptance of order. Where Goods are supplied for export outside of the United Kingdom the Supplier's published export price list shall apply.

5.2 Prices for the Goods do not include:

- 5.2.1 sales taxes, valued added tax and/or any applicable duties;
- 5.2.2 insurance; and
- 5.2.3 the cost of loading, unloading, carriage and installation,
all of which shall be invoiced to the Customer in addition.
- 5.3 The price for the Services shall be the price set out in the Quotation.
- 5.4 Prices for the Services do not include:
 - 5.4.1 sales taxes, valued added tax and/or any applicable duties;
 - 5.4.2 transportation, consumables, travel and accommodation,
all of which shall be invoiced to the Customer in addition.
- 5.5 The Supplier reserves the right, to invoice the Customer for Goods delivered in instalments after such instalment has been delivered, and the provisions of these terms shall apply in full to such invoices as if such instalment was a separate Contract.
- 5.6 The Supplier reserves the right, by giving notice to the Customer at any time before delivery of the Goods or commencement of the Services (as applicable), to:
 - 5.6.1 increase the price of the Goods/Services to reflect any increase in the cost to the Supplier which is due to any factor beyond its reasonable control (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); and
 - 5.6.2 make any change in delivery dates, quantities or specifications for the Goods/Services which are requested by the Customer and accepted by the Supplier, or result from any instructions of the Customer or the failure of the Customer to give the Supplier adequate information or instructions.
- 5.7 Payment shall be made in Pounds Sterling and in cleared funds within thirty days of the date of the Supplier's invoice unless the Quotation specifies otherwise.
- 5.8 Time for payment shall be of the essence. Without prejudice to any other rights it may have, the Supplier may suspend the supply of the goods/services, under any contract it has with the Customer, should the customer fail to pay any of its invoices on time.
- 5.9 Subject to clause 5.10, if the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's other legal remedies, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.10 If the Supplier is entitled to charge interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 then the provisions in the Act shall take precedence over clause 5.9.
- 5.11 All amounts due under this agreement from the Customer to the Supplier shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6 DELIVERY

- 6.1 Unless otherwise agreed in writing, delivery of the Goods shall take place at the Customer's place of business and may be made by the Supplier by any method of transport it may select.
- 6.2 Any dates and times quoted for delivery of the Goods are approximate only unless expressly agreed to the contrary by the Supplier in writing.
- 6.3 Any liability of the Supplier for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice

raised for such Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Supplier to deliver any one or more of the instalments in accordance with the Contract or these terms or any claim by the Customer in respect of any one or more of the instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 6.5 If the Customer fails to take delivery of the Goods or fails to give the Supplier adequate delivery instructions when the Goods are ready for delivery then:
 - 6.5.1 the risk in the Goods will pass to the Customer (including for loss or damage caused by the Supplier's negligence);
 - 6.5.2 the Goods will be deemed to have been delivered;
 - 6.5.3 the Supplier may store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage.
- 6.6 Where the Goods are supplied for export from the United Kingdom, the provisions of clause 7 take precedence over the provisions of this clause 6 to the extent of any conflict.

7 EXPORT TERMS

- 7.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 7 shall (subject to any special terms agreed in writing between the Customer and the Supplier) apply notwithstanding any other provision of these terms.
- 7.2 In these terms "**Incoterms**" means the international rules for the interpretation of trade terms of the international Chamber of Commerce as in force at the date of the Contract. Unless the context otherwise requires, any term of expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these terms, but if there is any conflict between the provisions of Incoterms and these terms, the latter shall prevail.
- 7.3 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 7.4 Unless otherwise agreed in writing between the Customer and the Supplier, the Goods shall be delivered ex works with the Customer being responsible for the costs of packaging, insurance and freight. In the event that the Supplier provides the Customer with reusable flight cases for the equipment then the Customer shall return these to the Supplier at the Customer's own cost within 14 days of receipt.
- 7.5 The Customer shall be responsible for arranging for testing and inspection of the Goods at the Supplier's premises before shipment. Pursuant to clause 10.2.1(a), the Supplier shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment.

8 RISK AND TITLE

- 8.1 Subject to clause 6.5.1, risk in the Goods shall pass to the Customer on completion of delivery.
- 8.2 Title to the Goods shall not pass to the Customer until the earlier of:
 - 8.2.1 the Supplier receives payment in full (in cash or cleared funds) for the Goods, in which case title to the Goods shall pass at the time of payment; and
 - 8.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 8.4.

- 8.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 8.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 8.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 8.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - 8.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.3 or if it suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; and
 - 8.3.5 give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - (a) the Goods; and
 - (b) the ongoing financial position of the Customer.
- 8.4 Subject to clause 8.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 8.4.1 it does so as principal and not as the Supplier's agent; and
 - 8.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 8.5 At any time before title to the Goods passes to the Customer, the Supplier may:
- 8.5.1 by notice in writing, terminate the Customer's right under clause 8.4 to resell the Goods or use them in the ordinary course of its business; and
 - 8.5.2 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 8.6 The Supplier shall be entitled to recover payment for the Goods notwithstanding that title has not passed from the Supplier.
- 8.7 The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 9.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 9.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 9.2.
- 9.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

10 WARRANTIES AND REMEDIES

- 10.1 The Supplier warrants that, on delivery, the Goods will:
- 10.1.1 materially correspond with their specification; and
 - 10.1.2 be free from material defects in design, material and workmanship.
- 10.2 Subject to clause 10.3, if:
- 10.2.1 the Customer gives written notice to the Supplier:
 - (a) within 3 days of the date of delivery (or if clause 7 applies, before the Goods are removed from the Supplier's premises by the Customer); or
 - (b) where the defect or failure would not be apparent on reasonable inspection at time of delivery, within a reasonable time after discovery of the defect or failure (in any event not exceeding 28 days from date of delivery);
 - 10.2.2 the Supplier is given reasonable opportunity to inspect the Goods; and
 - 10.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost. Any Goods returned by the Customer to the Supplier must be accompanied by a form setting out (i) the number of Goods returned; (ii) a summary of the Goods' non-compliance with the warranty given in clause 10.1; and (iii) the full name, address and telephone number of the person or agent with whom the Supplier may contact in relation to such Goods (if not already provided). The Goods must be returned in their original packing or in a durable container, sufficiently cushioned to prevent damage in transit,
- then the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 10.3 For the avoidance of doubt, any damage suffered to returned Goods in transit to the Supplier is at the Customer's risk.
- 10.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 10.1 if:
- 10.4.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 10.2.1;
 - 10.4.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 10.4.3 the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
 - 10.4.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
 - 10.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 10.4.6 the Goods differ from their specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 10.5 Except as provided in this clause 10, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 10.1.
- 10.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 10.7 The Supplier shall supply the Services to the Customer in accordance with the Quotation in all material respects.

- 10.8 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Quotation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 10.9 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 10.10 The Customer's sole remedy for the Supplier not having provided the Services in accordance with the Contract is for the Supplier to repeat the services within a reasonable period of time.

11 CONFIDENTIALITY

- 11.1 Each party undertakes that it shall not for a period of three years after supply of the Goods/Services, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2.
- 11.2 Each party may disclose the other party's confidential information:
- 11.2.1 to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
 - 11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

12 LIMITATION OF LIABILITY

- 12.1 References to liability in this clause 12 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.2 Nothing in the Contract limits any liability:
- 12.2.1 which cannot legally be limited, including liability for:
 - (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
 - (d) defective products under the Consumer Protection Act 1987; or
 - 12.2.2 under the indemnities given in clause 3.3, clause 13 or clause 14.1.
- 12.3 Subject to clause 12.2, the Supplier's liability for the following types of loss is wholly excluded:
- 12.3.1 loss of profits;
 - 12.3.2 loss of sales or business;
 - 12.3.3 loss of agreements or contracts;
 - 12.3.4 loss of anticipated savings;
 - 12.3.5 loss of use or corruption of software, data or information;
 - 12.3.6 loss of or damage to goodwill; and
 - 12.3.7 indirect or consequential loss.

12.4 Subject to clause 12.2 and clause 12.3, the Supplier's total liability to the Customer under or in relation to the Contract shall not exceed the total charges paid and payable by the Customer under the Contract.

12.5 This clause 12 shall survive termination of the Contract.

13 INDEMNITY

13.1 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with:

13.1.1 the Customer's breach or negligent performance or non-performance of the Contract;

13.1.2 the enforcement of the Contract.

14 TERMINATION

14.1 Except as permitted by clause 14.3, the Contract may only be terminated by the Customer with the Supplier's agreement in writing and on terms that the Customer shall indemnify the Supplier 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 Supplier as a result of such cancellation, save that nothing in this clause shall be construed as excluding or limiting any statutory rights to return Goods or to cancel the Contract where the Customer deals as a Consumer.

14.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

14.2.1 the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified to make such payment;

14.2.2 the Customer commits any other material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified to do so; or

14.2.3 there is a change of Control of the Customer whereby "**Control**" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company.

14.3 Either party may terminate the Contract with immediate effect upon written notice to the other if the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.

14.4 On termination of the Contract:

14.4.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

14.4.2 the Customer shall return all of the Supplier Materials (as defined in clause 4.1.7) and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for

their safe keeping and will not use them for any purpose not connected with the Contract.

14.5 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

14.6 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

15 FORCE MAJEURE

15.1 The Supplier shall be under no liability for any delay or failure to perform its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond the Supplier's reasonable control (including but not limited to Act of God, legislation, terrorism, war, fire, drought, failure of power supply, lock-out, strike or other action taken by employees in contemplation or furtherance of a trade dispute or owing to any inability to procure materials required for their performance of the Contract) (a "**Force Majeure Event**").

15.2 The Supplier shall notify the Customer of any circumstance arising under clause 15.1 and if such circumstance prevails for more than three months then the Supplier shall have the option by giving notice in writing to the Customer to bring the Contract to an end.

16 GENERAL

16.1 Assignments and dealings.

16.1.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

16.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

16.2 Notices.

16.2.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service or tracked international post at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by email to:

(i) the Supplier at service@pbasher.com.

(ii) the Customer, to the email address to which the Supplier sent the Quotation and/or to the email to which the Supplier sent its order confirmation to.

16.2.2 Any notice shall be deemed to have been received:

(a) if delivered by hand, at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

(c) if sent by tracked international post, at 9.00 am on the fifth Business Day after posting

(d) if sent by email, at the time of transmission, or if such time is not on a Business Day then at 9.00 am on the next Business Day.

- 16.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 16.3 **No partnership or agency.** Nothing in these conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 16.4 **Entire agreement.**
- 16.4.1 The Contract constitutes the entire agreement between the parties.
- 16.4.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 16.5 **No waiver.** No waiver by the Supplier of any breach of the Contract or these terms by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 16.6 **Severance.** If any provision of these terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these terms and the remainder of the provision in question shall not be affected thereby.
- 16.7 **Third party rights.** The parties to the Contract do not intend that any provisions of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 16.8 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 16.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.