

SPRINGFORM TECHNOLOGY LIMITED
TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

In these standard terms and conditions:

1.1 the following words and expressions shall have the following meanings:

"Applicable Law" any statute, statutory instrument, bye-law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court regulator or tribunal) or legally binding rule or policy issued by any governmental, statutory or regulatory body which relates to the Contract and/or the Goods and/or the Services

"Business Day" a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales

"Buyer" the person whose order for the Goods and/or Services is accepted by the Company in accordance with **Condition 2.2**

"Company" Springform Technology Limited (Company number 02785492, whose trading address is at Highfield Mills, Canal Street, Long Eaton)

"Confidential Information" all information in respect of the business of the Company including know-how and other matters connected with the Goods and Services, information concerning the Company's relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Company and of such persons and any other information which, if disclosed, will be liable to cause harm to the Company

"Contract" the contract between the Company and the Buyer for the sale and purchase of the Goods and/or supply of the Services formed in accordance with **Condition 2**

"Control" has the meaning set out in sections 450 and 451 Corporation Tax Act 2010

"Delivery Point" the place where delivery of the Goods is to take place under **Condition 6.1**

"Excluded Parts" all items referred to as "wear parts", which are: tooling, feed rollers, feed tubes, forming fingers, killer rollers, electrode rollers, anti-slag rollers, slip rings, anvils, blades and cutters, welding horns, spokes, spiked wheels, glue nozzles

"Force Majeure Event"

- (a) act of God;
- (b) war, insurrection, riot, civil commotion, act or threat of terrorism;
- (c) lightning, earthquake, fire, flood, storm, or extreme weather condition;
- (d) theft, malicious damage;
- (e) strike, lockout, industrial dispute (whether affecting the workforce of the Company and/or any other person);
- (f) breakdown or failure of plant or machinery;
- (g) inability to obtain essential supplies or materials;
- (h) change in Applicable Law;
- (i) any failure or default of a supplier or sub-contractor of the Company; or
- (j) any event or circumstance to the extent it is beyond the reasonable control of the Company

"Goods" the spring coiling and assembly machines and/or associated spare parts and any other goods which the Company supplies to the Buyer (including any of them or any part of them) under a Contract

"Insolvent" either party is Insolvent where it:

- (a) gives notice under section 84 Insolvency Act 1986 or proposes or passes a resolution for its winding up or in the case of a limited liability partnership proposes or determines that it will be wound up (save for the purpose of a solvent reconstruction or

amalgamation previously approved in writing by the Company) or has a winding up petition presented against it;

- (b) has a winding-up order or a notice of striking off made in respect of it;
- (c) has an administration order or an application for an administration order made in respect of it or has a notice of appointment of an administrator or a notice of intention to appoint an administrator filed in respect of it at any court;
- (d) proposes, makes or is subject to a voluntary arrangement, a composition with its creditors generally, an application to a court of competent jurisdiction for protection from its creditors generally or a scheme of arrangement under Part 26 Companies Act 2006 (save for the purpose of a solvent reconstruction or amalgamation previously approved in writing by the other party);
- (e) has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income;
- (f) ceases to trade;
- (g) is unable to pay its debts as they fall due;
- (h) has any distraint, execution or other process levied or enforced on any of its property which is not paid out, settled or discharged within 21 days;
- (i) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction; or
- (j) is the subject of an application for the recognition of a foreign insolvency proceeding under the Cross-Border Insolvency Regulations 2006 (SI 2006/1030) or is the subject of any proceeding in any Member State of the European Union which is capable of recognition under the EC Regulation on Insolvency Proceedings (EC 1346/2000)

"Intellectual Property Rights" all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions

"Prices" the prices set out in the Company's quotation for the relevant Goods and, if applicable Services, or if no quotation is provided, the prices set out in the Company's price list in force on the date on which the relevant Goods are delivered in accordance with **Condition 6**, as varied in accordance with **Condition 4.3**

"Services" any maintenance, support, repair and/or training services which the Company agrees to provide to the Buyer (including any of them or any part of them)

"Site" the site on which the Services are carried out and/or the Goods installed or commissioned

"Specification" in relation to the Goods and/or Services, the technical specifications of those Goods and/or the Services provided by the Company

"Terms and Conditions" these standard terms and conditions of sale together with any special terms agreed in writing between the Buyer and the Company

- 1.2 all headings are for ease of reference only and shall not affect the construction or interpretation of the Terms and Conditions;
- 1.3 unless the context otherwise requires:
 - 1.3.1 references to the singular include the plural and vice versa and references to any gender include every gender;

1.3.2 references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);

- 1.4 references to any statute or statutory provision shall include any subordinate legislation made under it and shall be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time; and
- 1.5 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them.

2. FORMATION AND INCORPORATION

2.1 Subject to any variation under **Condition 2.7**, the Contract will be upon the Terms and Conditions to the exclusion of all other terms and conditions, including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.

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

2.3 Any quotation is valid for a period of 30 days only from its date, provided the Company has not previously withdrawn it.

2.4 The Buyer must ensure that the terms of its order and any applicable Specification are complete and accurate.

2.5 Acceptance of delivery of the Goods or commencement of the performance of the Services will be deemed conclusive evidence of the Buyer's acceptance of the Terms and Conditions.

2.6 Subject to **Condition 6.3**, the Buyer may not cancel the Contract. The Company may cancel the Contract at any time prior to delivery and in such event the Company shall not incur any liability to the Buyer except to return any deposit already paid by the Buyer to the Company.

2.7 No variation to the Terms and Conditions shall be effective unless it is in writing and signed by a duly authorised representative on behalf of the Company.

3. THE GOODS AND SERVICES

3.1 The quantity and description of the Goods and/or Services will be as set out in the Company's quotation and/or any Specification.

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

3.3 The Company may make any changes to the Specification, design, materials or finishes of

- the Goods and/or provision of the Services which:
- 3.3.1 are required to conform with any applicable safety or other statutory or regulatory requirements;
 - 3.3.2 are necessary for technical reasons; or
 - 3.3.3 do not materially adversely affect their quality or performance.
- 3.4 The Buyer shall inform the Company prior to entering into the Contract or where this is not possible, as soon as practicable after entering into the Contract all relevant details as to the Site where the Goods will be installed, including:
- 3.4.1 Specification and characteristics of electricity and compressed air supplies on the Site;
 - 3.4.2 any relevant health and safety, electricity or any other requirements in relation to installation or commissioning of the Goods or carrying out the Services;
- 3.5 Where the Company is providing Services, the Buyer shall:
- 3.5.1 provide the Company with access to the Goods or other equipment which the Company is maintaining and/or repairing at all times during the Contract; and
 - 3.5.2 take all reasonable precautions to protect the health and safety of the Company's employees, agents and sub-contractors while such persons are on the Site.
- 4. PRICE**
- 4.1 The Prices are exclusive of carriage and delivery costs which shall be payable by the Buyer in addition to the Prices.
- 4.2 Any sum payable under the Contract is exclusive of value added tax (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority including any export duties) which shall be payable in addition to that sum in the manner and at the rate prescribed by law from time to time.
- 4.3 The Company shall be entitled to vary the Prices following any changes in the Specification made at the request of the Buyer and agreed by the Company or to cover any extra expense as a result of the Buyer's instructions or lack of instructions or to comply with the requirements referred to in **Condition 3.3.1**. The Company shall give written notice of the variation to the Buyer.
- 5. PAYMENT**
- 5.1 The Buyer shall pay the Prices to the Company in accordance with this **Condition 5**.
- 5.2 The Company shall be entitled to invoice the Buyer for the Prices for the Goods and any carriage and delivery costs payable by the Buyer in addition to the Prices upon the following terms (unless expressly varied in the Company's quotation or Specification):
- 5.2.1 30% of the Prices as a deposit upon the Company issuing the relevant written acknowledgement of order in accordance with **Condition 2.2**;
 - 5.2.2 60% of the Prices together with carriage and delivery costs upon despatch of the Goods; and
 - 5.2.3 10% of the Prices after installation or commissioning of the Goods by the Company.
- 5.3 The Company shall be entitled to invoice the Buyer for the Prices for the Services following commencement of performance of the Services, on a monthly basis in arrears.
- 5.4 Each invoice shall be payable by the Buyer within 30 days following the date on which the invoice is issued.
- 5.5 All payments shall be made in pounds sterling in cleared funds by BACS (Bank Automated Clearing System) transfer to such bank account as the Company may nominate from time to time or if the prior written consent of the Company is given, by cheque.
- 5.6 The Company shall be entitled, by giving written notice to the Buyer, to appropriate any payment by the Buyer to any invoice issued by the Company.
- 5.7 Time shall be of the essence in respect of the payment timescales set out in **Condition 5.4** and any timescales which may be substituted for them by the agreement in writing of the parties.
- 5.8 Save as otherwise expressly provided in the Contract or required by law, all payments to be made by the Buyer to the Company under the Contract shall be made in full and without any set-off or any deduction or withholding including on account of any counter-claim.
- 5.9 The Company may, at its sole discretion, claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.10 If the Buyer fails to make any payment due to the Company under the Contract on or before the due date the Company shall be entitled to withhold further deliveries of Goods and to suspend provision of the Services until payment of all overdue sums has been made and to cancel any or all orders accepted under **Condition 2.2** which have not yet been delivered or performed.
- 5.11 Following termination of the Contract:
- 5.11.1 the Company shall be entitled to invoice all Prices and any carriage and delivery costs incurred which have not yet been invoiced; and
 - 5.11.2 all invoices (including any invoices issued under **Condition 5.11.1**) shall become immediately due and payable by the Buyer.
- 6. DELIVERY**
- 6.1 Delivery of the Goods will be made ex works as defined in INCOTERMS 2010.
- 6.2 The Buyer will take delivery of the Goods as soon as possible and in any event within 24 hours after the Company or the relevant courier notifies the Buyer that they are ready for delivery. Delivery of the Goods and/or performance of the Services will be made during the Company's usual business hours.
- 6.3 The Company will use reasonable endeavours to deliver each of the Buyer's orders for the Goods and/or perform the Services within the time agreed when the Buyer places an order and, if no time is agreed, then within a reasonable time, but the time of delivery and/or performance will not be of the essence. If, despite those endeavours, the Company is unable for any reason to fulfil any delivery or performance on the specified date, the Company will be deemed not to be in breach of this Contract, nor (for the avoidance of doubt) will the Company have any liability to the Buyer for direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery and/or performance except as set out in this condition. Any delay in delivery and/or performance will not entitle the Buyer to cancel the order unless and until the Buyer has given 60 days' written notice to the Company requiring the delivery and/or the performance to be made and the Company has not fulfilled the delivery and/or performance within that period. If the Buyer cancels the order in accordance with this **Condition 6.3** then:
- 6.3.1 the Company will refund to the Buyer any sums which the Buyer has paid to the Company in respect of that order which has been cancelled; and
 - 6.3.2 the Buyer will be under no liability to make any payments under **Condition 5.1** in respect of that order which has been cancelled.
- 6.4 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for off-loading the Goods.
- 6.5 If the Buyer fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered and/or Services to be performed on time (except solely on account of the Company's default), the Goods and/or Services will be deemed to have been delivered or performed on the due date and (without prejudice to its other rights) the Company may:
- 6.5.1 store or arrange for storage of the Goods until actual delivery or sale in accordance with **Condition 6.5.2** and charge the Buyer for all related costs and expenses (including storage and insurance); and/or
 - 6.5.2 following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract or account to the Buyer for any excess achieved over the price under the Contract, in both cases having taken into account any charges related to the sale.
- 7. PASSING OF RISK AND RETENTION OF TITLE**
- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer on delivery or deemed delivery of the Goods in accordance with **Condition 6**.
- 7.2 Legal and beneficial ownership of the Goods shall not pass to the Buyer until the Company has received in full in cleared funds:
- 7.2.1 all sums due to it in respect of the Goods; and
 - 7.2.2 all other sums which are or which become due to the Company from the Buyer on any account whatsoever.
- 7.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- 7.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
 - 7.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - 7.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 7.3.4 not, without the Company's prior written consent, annex any Goods to its premises;
 - 7.3.5 maintain the Goods in satisfactory condition;
 - 7.3.6 keep the Goods insured for their full price against all risks to the reasonable satisfaction of the Company and whenever requested by the Company produce a copy of the policy of insurance to the Company and ensure that any insurance proceeds received under the relevant policy are applied to replacing or repairing lost or damaged Goods; and

- 7.3.7 not be entitled to use the Goods and the Buyer acknowledges that the software within the Goods will not be enabled by the Company until full payment has been received for the Goods by the Company.
- 7.4 Until ownership of the Goods has passed to the Buyer, the Buyer's right to possession shall terminate immediately:
- 7.4.1 if the Buyer becomes Insolvent;
- 7.4.2 if the Buyer is in breach of any of its obligations under the Contract or any other contract between the Company and the Buyer;
- 7.4.3 if the Buyer encumbers or in any way charges any of the Goods; or
- 7.4.4 if the Contract terminates for any reason.
- 7.5 The Company shall be entitled to recover payment for the Goods (including by way of court action) notwithstanding that ownership of any of the Goods has not passed from the Company.
- 7.6 The Buyer grants the Company, its agents, employees and sub-contractors 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 Buyer's right to possession, use and resale has terminated, to recover them.
- 7.7 The Company's rights contained in this **Condition 7** shall survive termination of the Contract however arising.
- 8. WARRANTY AND EXCLUSION OF LIABILITY**
- Warranty**
- 8.1 The Company will, free of charge, within a period of 12 months from the date of delivery of Goods which are proved to the reasonable satisfaction of the Company to be damaged or defective due to defects in material, or workmanship or design (other than a design made, furnished or specified by the Buyer), repair, or at its option replace, such Goods. This obligation will not apply in relation to the Excluded Parts and shall not apply where:
- 8.1.1 the Goods have been improperly altered in any way whatsoever, or have been subject to misuse or unauthorised repair;
- 8.1.2 the Goods have been improperly installed or connected, otherwise than by the Company;
- 8.1.3 any maintenance requirements relating to the Goods have not been complied with;
- 8.1.4 any instructions as to storage of the Goods have not been complied with in all respects; or
- 8.1.5 the Buyer has failed to notify the Company of any defect or suspected defect within 7 days of the delivery where the defect should be apparent on reasonable inspection, or within 21 days of the same coming to the knowledge of the Buyer where the defect is not one which should be apparent on reasonable inspection.
- 8.2 Any repair and maintenance required as follows:
- 8.2.1 in relation to the Excluded Parts;
- 8.2.2 where any of **Conditions 8.1.1 to 8.1.5** apply; or
- 8.2.3 following expiry of the 12 month warranty shall, if requested by the Buyer and agreed by the Company, be carried out as part of the Services on the basis of the Prices specified in the Company's published price list at the time the Services are carried out, within such timescales as may be agreed from time to time by the Company and the Buyer.
- 8.3 If the Company decides that replacement Goods are necessary, it will refund to the Buyer the cost of carriage on the return of any such defective or damaged Goods, and will deliver any replacement Goods to the Buyer at the Company's own expense.
- 8.4 Any repaired or replacement Goods will be liable to repair or replacement under the terms specified in **clause 8.1** for the unexpired portion of the 12 month period from the date of delivery of the original Goods.
- 8.5 The Company will perform the Services with reasonable skill and care. If the Company has breached this obligation the Buyer shall notify the Company within 7 days of becoming aware of the breach and in any event within 3 months of the date when the relevant Services were performed. The Company shall at its option re-perform the relevant Services or refund the part of any charges paid by the Buyer to the Company which relate to the defective Services.
- Exclusion of Liability**
- 8.6 In the event of any breach of the Company's express obligations under **Conditions 6.3, 8.1, 8.2, 8.4 or 8.5** above the remedies of the Buyer will be limited to damages.
- 8.7 Subject to **Condition 8.1**, all warranties, conditions and other terms implied by law (whether by statute, common law or otherwise) are excluded from the Contract.
- 8.8 Nothing in this Agreement shall operate to restrict or exclude one party's liability (if any) to the other:
- 8.8.1 for fraud or fraudulent misrepresentation;
- 8.8.2 for personal injury or death resulting from its negligence;
- 8.8.3 for any other matter for which it would be illegal for the Company to exclude or limit or to attempt to exclude or limit its liability.
- 8.9 Subject to **Condition 8.8** the Company's maximum aggregate liability (whether in contract (by way of indemnity or otherwise), tort (including negligence), misrepresentation, breach of statutory duty, restitution, wilful default or otherwise) for the duration of the Contract and following termination or expiry in respect of all and any loss or damage arising in connection with the Contract or the Goods and/or Services will be limited to:
- 8.9.1 the Prices paid or payable by the Buyer to the Company in respect of the Goods supplied under the relevant Contract, where Goods only or Goods and Services are being supplied; or
- 8.9.2 the Prices paid or payable by the Buyer to the Company in respect of the Services supplied under the relevant Contract, where only Services are being provided under the Contract.
- 8.10 Except as provided under **Condition 8.8** the Company will be under no liability whatsoever to the Buyer (whether in contract (by way of indemnity or otherwise), tort (including negligence), misrepresentation, breach of statutory duty, restitution, wilful default or otherwise) for any of the following types of losses (whether those losses arise directly in the normal course of business or otherwise):
- 8.10.1 pure economic loss, loss of profits, loss of business, loss of revenue, loss of contract, loss or depletion of goodwill and/or business opportunity, loss of anticipated earnings or savings or like loss;
- 8.10.2 wasted management, operational or other time;
- 8.10.3 any special, indirect or consequential losses;
- even if such losses are foreseeable and/or the Company has been advised of or is aware) of the possibility of the Buyer incurring or suffering such losses.
- 8.11 The Prices are determined on the basis of the exclusions from and limitations of liability contained in this Contract. By entering into this Contract the Buyer agrees that these exclusions and limitations of liability are reasonable and reflected in the price which would be higher without those provisions. The Buyer agrees to accept such risk and/or insure accordingly.
- 8.12 If the Company is liable under this **clause 8** to pay any sums to the Buyer in respect of any defective Goods then if requested by the Company in writing, the Buyer shall return such defective Goods to the Company, subject to the Company paying carriage and delivery costs.
- 9. FORCE MAJEURE**
- 9.1 Subject to **Condition 9.3**, either party shall be in breach of the Contract or otherwise liable to the other party for any failure to perform or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event.
- 9.2 If a Force Majeure Event occurs:
- 9.2.1 the party affected by the Force Majeure Event ("Affected Party") shall as soon as reasonably practicable after becoming aware of the Force Majeure Event give written notice to the other party that the Force Majeure Event has occurred; and
- 9.2.2 the Affected Party shall use reasonable endeavours, without being required to incur additional expenditure, to mitigate the effects of the Force Majeure Event.
- 9.3 The Buyer shall continue to pay the prices for any Goods and/or Services which the Company continues to supply notwithstanding the occurrence of the Force Majeure Event.
- 9.4 If a Force Majeure Event which affects performance of all or substantially all of the Company's obligations under the Contract and which gives rise to relief from liability under **Condition 9.1** continues for a period of more than 6 months, either party shall be entitled to terminate the Contract by giving not less than 30 days written notice to that effect to the other party.
- 10. TERMINATION**
- 10.1 If the Buyer:
- 10.1.1 commits a material breach of the Contract which cannot be remedied; or
- 10.1.2 commits a material breach of the Contract which can be remedied but fails to remedy that breach within 14 days of a written notice setting out the breach and requiring it to be remedied being given by the Company;
- the Company may terminate the Contract immediately by giving written notice to that effect to the Buyer.
- 10.2 **Condition 10.1** shall not apply to any failure by the Buyer to make any payment due to the Company under the Contract on or before the due date. **Condition 10.4** shall apply instead to any such failure.
- 10.3 Either party may terminate the Contract immediately by giving written notice to that effect to the other party if the other party becomes Insolvent.
- 10.4 Subject to **Condition 10.5**, the Company may terminate the Contract by giving not less than 7 days written notice to that effect to the Buyer if the Buyer fails to make any

- payment due to the Company under the Contract within 14 days after the due date.
- 10.5 The right of termination set out in **Condition 10.4** shall not arise in respect of any failure to make payment of any sum to the extent that such sum is and remains the subject of a bona fide dispute (where any sum which is not part of the bona fide dispute has been paid in accordance with the Contract) and for a period of 7 days following resolution of such dispute.
- 10.6 The Buyer shall notify the Company as soon as reasonably practicable if there is a change in Control of the Buyer. In such event the Company may terminate the Contract by giving 7 days written notice to the Buyer.
- 10.7 Following expiry or termination of the Contract:
- 10.7.1 **Conditions 1, 3, 4, 5, 7, 8, 10, 11, 12, 13, 14, 15** shall continue in force, together with any other Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract; and
- 10.7.2 all other rights and obligations shall immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.
- 10.8 The Company will be entitled to suspend any deliveries and/or performance otherwise due to occur following service of a notice specifying a breach under **Condition 10.1.2**, until either the breach is remedied (if applicable) or the Contract terminates, whichever occurs first.

11. INTELLECTUAL PROPERTY

- 11.1 No right or licence is granted to the Buyer in respect of the Intellectual Property Rights of the Company, except the right to use the Goods and/or the Services in the Buyer's ordinary course of business.
- 11.2 The Buyer will not without the Company's prior written consent allow any trade marks of the Company or other words or marks applied to the Goods to be obliterated, obscured or omitted nor add any additional marks or words.
- 11.3 The Buyer will not without the Company's prior written consent modify the Goods, including any software within the Goods or operate the Goods except in the manner authorised by the Company.

12. CONFIDENTIALITY

- 12.1 Both parties will keep confidential any and all Confidential Information that it may acquire.
- 12.2 Each party will not use the Confidential Information for any purpose other than to perform its obligations under the Contract. Each party will ensure that it only discloses the Confidential Information to such officers, employees, professional advisers and sub-contractors as are necessary in connection with the Contract and each party shall ensure that such persons comply with the provisions of this **Condition 12**.
- 12.3 The obligations set out in **Condition 12.1** and **12.2** will not apply to any information which:
- 12.3.1 is publicly available or becomes publicly available through no act or omission of the party receiving the Confidential Information; or
- 12.3.2 the party receiving the Confidential Information is required to disclose by order of a court of competent jurisdiction.

13. GENERAL

- 13.1 Time shall not be of the essence in respect of any obligation with which the Company is required to comply under the Contract.
- 13.2 The Company's rights and remedies set out in the Terms and Conditions are in addition to and not exclusive of any rights and remedies provided by law.
- 13.3 If any term of the Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term shall be deemed to be severed from the Contract and this shall not affect the remainder of the Contract which shall continue in full force and effect.
- 13.4 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract shall not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor shall the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default shall only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and shall not constitute a waiver of any other right, remedy, breach or default.
- 13.5 The Buyer shall not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under the Contract or to sub-contract any of its obligations under the Contract.
- 13.6 The Company shall be entitled to assign, transfer, charge, hold on trust for any person and deal in any other manner with any of its rights under the Contract and to sub-contract any of its obligations under the Contract.
- 13.7 The parties may vary or rescind the Contract without the consent of the Company's employees, agents or sub-contractors.
- 13.8 The parties do not intend that any term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.
- 13.9 The Contract and the Specification constitute the entire agreement between the parties and supersede any prior agreement or arrangement in respect of its subject matter and:
- 13.9.1 neither party has entered into the Contract in reliance upon, and it shall have no remedy in respect of, any representation or statement (whether made by the other party or any other person) which is not expressly set out in the Contract; and
- 13.9.2 nothing in this **Condition 13.9** shall be interpreted or construed as limiting or excluding the liability of either party for fraud or fraudulent misrepresentation.

14. NOTICE

- 14.1 Subject to **Condition 14.4** any notice or other communication given under or in connection with the Contract shall be in writing, in the English language and:
- 14.1.1 delivered by hand;
- 14.1.2 sent by pre-paid first class post or airmail post; or
- 14.1.3 sent by facsimile
- to the Company at the address or facsimile number and marked for the attention of the individual detailed below or to the Buyer at the address or facsimile number detailed in any purchase order or other document received by the Company from the Buyer (or such other address, facsimile number or, in the case of the Company, individual, as may

be notified by the relevant party to the other party from time to time in accordance with this **Condition 14**):

The Company: Springform Technology Limited, Highfield Mills, Canal Street, Long Eaton, Nottingham NG10 4NL, England.

Fax: + 44 115 9467345

For the attention of: Ian J. Whitworth, Managing Director

- 14.2 Any notice or communication given in accordance with **Condition 14.1** shall be deemed to have been served:
- 14.2.1 if delivered by hand, at the time of delivery; and
- 14.2.2 if sent by pre-paid first class post, at 9.00 a.m. 48 hours after the date of posting or in the case of airmail post, 7 days after posting; and
- 14.2.3 if sent by facsimile at the time of confirmation of completion of transmission by way of a transmission report;
- 14.3 To prove service of a notice or communication it shall be sufficient to prove that the provisions of **Condition 14.1** were complied with.
- 14.4 This **Condition 14** shall not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.

15. GOVERNING LAW AND JURISDICTION

- 15.1 The Contract and any non-contractual obligations arising out of or in connection with it will be governed by English law.
- 15.2 Each party agrees that the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations).