

## STANDARD TERMS AND CONDITIONS OF SALE

### 1 INTERPRETATION

1.1 In these Conditions:

**“Buyer”** means the person who purchases Products from the Seller subject to these Conditions;

**“Conditions”** means the terms and conditions of sale set out in this document;

**“Contract”** means any agreement between the Seller and the Buyer for the sale and purchase of the Products incorporating these Conditions;

**“Despatch Date”** means the date of completion of delivery in accordance with condition 5.1 below;

**“Delivery Address”** means the Seller’s principal place of business;

**“Estimated Despatch Date”** means any estimated despatch date for Products indicated by the Seller to the Buyer;

**“Incoterms”** means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made;

**“Intellectual Property Rights”** means all intellectual property rights of any kind existing anywhere in the world whether or not registered and all applications, renewals and extensions of the same including, without limitation, copyright, database rights, design rights, patents, trademarks, service marks, trade names and other rights in goodwill, rights in know-how, trade secrets and other confidential information;

**“Products”** means the goods which the Seller is to supply to the Buyer in accordance with these Conditions; and

**“Seller”** means IDEAL INDUSTRIES Ltd, a company registered with company number 01824671 whose registered office is c/o CMD Limited, Sycamore Road, Eastwood Trading Estate, Rotherham, South Yorkshire S65 1EN t/a Casella whose principal place of business is at Regent House, Wolseley Road, Kempston, Bedford MK42 7JY.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and, in the plural, include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these Conditions.

### 2 BASIS OF SALE

2.1 Subject to any variation under condition 2.4, these Conditions apply to all Contracts 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, specification or other document).

2.2 Each order or acceptance of a quotation for Products by the Buyer from the Seller shall be deemed to be an offer by the Buyer to buy Products subject to these Conditions.

2.3 No variation to these Conditions shall be binding unless made in writing and signed on behalf of both the Buyer and the Seller specifying:

2.3.1 which condition is to be varied; and

2.3.2 full details of such variation.

- 2.4 No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller or (if earlier) the Seller delivers the Products to the Delivery Address.
- 2.5 The Seller's employees or agents are not authorised to make any representations concerning the Products unless confirmed by the Seller in writing. In entering into a Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.6 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Products which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### **3 SALE AND PURCHASE**

- 3.1 The Buyer agrees to purchase the Products from the Seller and the Seller agrees to sell the Products to the Buyer.
- 3.2 No order which has been accepted by the Seller may be cancelled by the Buyer except with the written agreement of the Seller and provided that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including cost of all labour and materials used), damages, charges and expenses incurred by the Seller, subject to the Seller taking all reasonable steps to mitigate any such loss.

### **4 SPECIFICATION**

- 4.1 The Buyer shall ensure the accuracy of any order (including any applicable specification) submitted by the Buyer.
- 4.2 If the Products are to be manufactured or any process is to be applied to the Products by the Seller in accordance with any specification given by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 4.3 The Seller reserves the right to make any changes in the specifications of the Products which are required to conform with any applicable safety or other requirements or which do not materially affect their quality or performance.

### **5 DELIVERY**

- 5.1 Delivery of the Products shall be completed when either:
- 5.1.1 the Seller notifies the Buyer that the Products are ready for collection from the Delivery Address; or
  - 5.1.2 (if the Seller has agreed in writing to arrange (at the Buyer's expense) for the Products to be transported to such address as is nominated in writing by the Buyer) the Seller despatches the Products to the courier for transportation.
- 5.2 Except where the Seller agrees in writing to arrange (at the Buyer's expense) for the Products to be transported to such address as is nominated in writing by the Buyer (in

which case condition 5.4 shall apply), the Buyer shall collect the Products from the Seller's premises within 3 Business Days of the Despatch Date.

- 5.3 The Seller shall endeavour to make the Products available for collection at the Delivery Address on or around the Estimated Despatch Date but the Buyer acknowledges that this is a non-binding estimate only and time shall not be of the essence of the Contract. If no dates are so specified, the Products will be available for collection within a reasonable time.
- 5.4 If the Seller agrees in writing to arrange (at the Buyer's expense) for the Products to be transported to such address as is nominated in writing by the Buyer, the Seller shall endeavour to despatch the Products from the Delivery Location to the courier on or around the Estimated Despatch Date but the Buyer acknowledges that this is a non-binding estimate only and time of despatch shall not be of the essence of the Contract. If no dates are so specified, despatch shall be within a reasonable time.
- 5.5 The Seller shall be entitled to deliver the Products to the Delivery Address in instalments in which case each instalment shall be treated as an entirely separate Contract and any default or breach by the Seller in respect of any such instalment shall not entitle the Buyer to cancel any other instalment or treat the Contract as a whole as repudiated.
- 5.6 The Seller shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products (even if caused by the Seller's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days
- 5.7 For orders in excess of 500 Product units, if the Seller delivers to the Delivery Address a quantity of Products up to 1% more or less than the quantity accepted by the Seller, the Buyer shall not be entitled to object to or reject the Products or any of them by reason of the surplus or shortfall.
- 5.8 The quantity of any consignment of Products as recorded by the Seller on collection by the Buyer or despatch to the courier from the Delivery Address shall be conclusive evidence of the quantity received by the Buyer unless the Buyer can provide conclusive evidence proving the contrary.
- 5.9 The Seller shall not be liable for any non-delivery of Products by the courier (even if caused by the Seller's negligence) unless the Buyer gives notice to the Seller of the non-delivery within seven days of the date when the Products would in the ordinary course of events have been received from the courier.
- 5.10 Any liability of the Seller for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Products.
- 5.11 If for any reason the Buyer fails to arrange collection of any of the Products or the Seller is unable to despatch the Products to a courier because the Buyer has not provided appropriate instructions, documents, licences or authorisations, then, without prejudice to any other right or remedy available to the Seller:
  - 5.11.1 risk in the Products shall pass to the Buyer (including loss or damage caused by the Seller's negligence);
  - 5.11.2 the Products shall be deemed to have been delivered;
  - 5.11.3 the Seller may store the Products until actual delivery is made and charge the Buyer for the costs (including insurance) of storage;

- 5.11.4 the Seller may sell the Products at the best price readily obtainable and (after deducting all storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract; and
  - 5.11.5 the Seller shall be entitled to charge interest (both before and after judgment) on the price payable for the Products under the Contract at 4% over the base rate from time to time of the Bank of England from the Estimated Delivery Date to the date of actual delivery.
- 5.12 The Buyer shall not be entitled to return any Products unless the Seller has given its written agreement to the Buyer prior to such return and the Products so returned are accompanied by a note of the reference number given to the Buyer by the Seller in respect of such Products. In such event, the Seller shall refund the price paid by the Buyer in respect of such Products, less a handling charge of 20% of the price paid in respect of such Products, with a minimum charge of £25.00 per return. All costs relating to the return of Products are the Buyer's responsibility.

## 6 INSTALLATION

- 6.1 If the Seller has confirmed to the Buyer in the acceptance of the order that the Seller will install the Products, the Seller shall install the Products:
- 6.1.1 on the date notified to the Buyer by the Seller (**Installation Date**); and
  - 6.1.2 at the address set out in the Buyer's order (**Installation Premises**).
- 6.2 On the Installation Date the Buyer shall:
- 6.2.1 co-operate with the Seller in all matters relating to the installation of the Products;
  - 6.2.2 provide the Seller, its agents, subcontractors and/or employees, access to the Installation Premises on the Installation Date;
  - 6.2.3 ensure that the Installation Premises are ready for the installation of the Products.
- 6.3 If the Seller's performance of its obligations under this condition 6 is prevented or delayed by any act or omission of the Buyer, its agents, subcontractors, consultants or employees (including but not limited to a breach by the Buyer of condition 6.2):
- 6.3.1 the Seller shall not be liable for any costs, charges or losses sustained or incurred by the Buyer that arise directly or indirectly from such prevention or delay; and
  - 6.3.2 the Buyer shall be responsible for:
    - 6.3.2.1 the price of the Products in accordance with condition 7; and
    - 6.3.2.2 the costs, charges and expenses of the Seller for the installation of the Products on such date as may be agreed between the Buyer and the Seller.

## 7 PRICES AND PAYMENT

- 7.1 Unless otherwise agreed by the Seller in writing, the price of the Products shall be the price set out in the Seller's published price lists on the date of the Contract less any applicable discount at the time the order is accepted.
- 7.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Products to reflect any increase in the cost to the Seller which is due to any factor beyond its control, any change in delivery dates, quantities or specifications for the Products which is requested by the Buyer or any delay caused by

any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

- 7.3 Unless otherwise agreed by the Seller in writing, all prices exclude freight, packaging, insurance, delivery and transportation costs and such costs for each order will be notified to the Buyer by the Seller and payable by the Buyer in addition on or before acceptance of that order.
- 7.4 The purchase price of the Products is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.
- 7.5 The Seller shall be entitled to invoice the Buyer for all amounts due under the Contract on or at any time after the Despatch Date.
- 7.6 Unless otherwise agreed in writing, the Buyer shall pay all invoices in full and without any deduction or set off (whether in relation to such invoice or otherwise) by bank transfer within 30 (thirty) days of the date of the invoice.
- 7.7 Time for payment shall be of the essence of each Contract.
- 7.8 No payment shall be deemed to have been received until the Seller has received clear funds and all payments shall be applied to invoices and to Products listed in such invoices in the order determined in its discretion by the Seller.
- 7.9 All payments payable to the Seller under a Contract shall become due immediately on its termination despite any other provision.
- 7.10 Payments shall be made in the same currency as that of the invoice. Prior authorisation is required for payment in any currency other than the currency invoiced.
- 7.11 If full payment is not received by the Seller by the due date then without prejudice to any other remedy it may have, either at common law or under condition 13 of these Conditions, the Seller shall be entitled:
  - 7.11.1 to cancel the Contract or suspend any further deliveries of Products to the Buyer under that or any other Contract;
  - 7.11.2 to sue for the entire price of the Products; and or
  - 7.11.3 to charge interest and costs (both before and after any judgment) at the rate of 4% over the base rate from time to time of the Bank of England on the outstanding balance; and/or
  - 7.11.4 to require the immediate return to the Seller of all goods agreed to be sold by the Seller to the Buyer in which the property has not passed to the Buyer in accordance with the provisions of condition 13 below and the Buyer hereby agrees to reimburse to the Seller upon demand for the Seller's costs or expenses in recovering such goods.

## **8 EXPORT TERMS**

- 8.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in this condition 8, but if there is any conflict between the provisions of Incoterms and this condition 8, the latter shall prevail.

- 8.2 Where the Products are supplied for export from the United Kingdom, the following provisions of this condition 8.2 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provisions of these Conditions:
- 8.2.1 the Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any duties on them;
  - 8.2.2 if the Seller agrees in writing to arrange for the Products to be transported to such address as is nominated in writing by the Buyer, the Buyer shall be responsible for all costs of transportation from the Delivery Address and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979;
  - 8.2.3 the Buyer shall be responsible for arranging for testing and inspection of the Products at the Delivery Address before collection or despatch from the Delivery Address;
  - 8.2.4 the Seller shall have no liability for any claim in respect of any defect in the Products which would be apparent on inspection and which is made after collection or despatch, or in respect of any damage during transit;
  - 8.2.5 if required by the Seller, the price of any Products sold pursuant to these Conditions shall be secured by an irrevocable letter of credit ("**Letter of Credit**") satisfactory to the Seller, established by and at the cost of the Buyer in favour of the Seller within 14 days of the date of the conclusion of the Contract and issued by a United Kingdom bank acceptable to the Seller. The letter of credit shall be for the price payable for the Products (together with any tax or duty payable) to the Seller and the Buyer shall ensure that the Letter of Credit remains valid for such reasonable period as the Seller shall require after the date of the Buyer's order (not exceeding 12 months) or, if earlier, until payment in full of the relevant purchase price. The Seller shall be entitled to immediate cash payment on presentation to such United Kingdom bank of the documents set out in the Letter of Credit; and
  - 8.2.6 if any such Letter of Credit is required in accordance with condition 8.2.5, the Buyer shall pay the Seller, on demand, the Seller's reasonable administration charge for the Letter of Credit, as notified to the Buyer by the Seller.

## 9 EQUIPMENT

- 9.1 The Seller may, from time to time, supply the Buyer with loan or demonstration equipment ("**Equipment**"). The ownership of the Equipment shall remain with the Seller but risk in the Equipment shall pass to the Buyer on delivery. The provisions of condition 13 shall apply to the Equipment.
- 9.2 The Seller reserves the right to invoice the Buyer in accordance with the Seller's published price list from time to time for any Equipment which the Buyer fails to return to the Seller within a reasonable timescale following the request by the Seller for the return of such Equipment.

## 10 QUALITY

- 10.1 The Seller warrants that the Products will be, on delivery and for the period stated in condition 10.3, of satisfactory quality within the meaning of the Sale of Goods Act 1979 and be reasonably fit for any particular purpose for which the Products are being bought provided the Buyer had made known that purpose to the Seller in writing and the Seller confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Seller, PROVIDED THAT:
  - 10.1.1 the Seller shall be under no liability in respect of any defect in the Products arising from any drawing, design or specification supplied by the Buyer;

- 10.1.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage or negligence by the Buyer or persons using the Products, abnormal working conditions, failure to follow the Seller's written instructions or misuse or alteration or repair of the Products without the Seller's approval;
  - 10.1.3 the Seller shall be under no liability if the total price of the Products has not been paid by the due date for payment;
  - 10.1.4 any such defect in or failure to meet any such specification by the Products shall be notified to the Seller in writing as soon as reasonably practicable after the Buyer discovers such defect or non-conformity;
  - 10.1.5 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Seller shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given by the manufacturer to the Seller; and
  - 10.1.6 the warranty is not transferrable or assignable in any way to any customer or client who purchases the Products from the Buyer.
- 10.2 The Seller shall not be liable for a breach of any of the warranties in condition 10.1 unless:
- 10.2.1 the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 14 days of the time when the Buyer discovers or ought to have discovered the defect; and
  - 10.2.2 the Seller is given a reasonable opportunity after receiving notice of examining such Products and the Buyer (if asked to do so by the Seller) returns the Products to the Seller's place of business at the buyers cost for the examination to take place.
- 10.3 The warranty periods are as follows unless otherwise stated by the Seller in writing:

<b>Products manufactured by the Seller</b>	<b>Repairs</b>	<b>Spare Parts</b>	<b>Products manufactured by a third party</b>
24 months on a repair or replace basis	3 months	3 months	based on individual manufacturer's warranty

Products manufactured by the Seller also include type 1 and type 2 microphones.

- 10.4 Consumables, including dry-cell and alkaline batteries, are not covered by the warranty.
- 10.5 Where re-chargeable batteries are part of the integral product design and that the product is shipped with batteries installed or where replacement batteries are supplied for such product (example: TUFF Pump, dBadge); the product warranty does not apply to batteries as they are covered by a twelve-month period assuming that the user has used the correct charger and followed the correct charging regime
- 10.6 In the event of any valid claim under condition 10.1 above being made by the Buyer, the Seller shall at its option replace or repair the Products (or the defective part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Products (or a proportionate part of the price as appropriate) provided that, if the Seller so requests, the Buyer shall at the sellers expense, return to the Seller the Products or the part of such Product which is defective. Products need to be sent back to the place of purchase with proof of purchase

## **11 LIMITATION OF LIABILITY**

- 11.1 Subject to condition 11.3, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Buyer in respect of:
- 11.1.1 any breach of these conditions, including any deliberate breach of these conditions by a party, or its employees, agents or subcontractors;
  - 11.1.2 any use made or resale by the Buyer of any of the Products, or of any product incorporating any of the Products; and
  - 11.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these conditions excludes or limits the liability of the Seller:
- 11.3.1 for death or personal injury caused by the Seller's negligence; or
  - 11.3.2 for any Claim under condition 12; or
  - 11.3.3 for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or
  - 11.3.4 for any intentional repudiatory breach; or
  - 11.3.5 for fraud or fraudulent misrepresentation.
- 11.4 Subject to condition 11.2 and condition 11.3:
- 11.4.1 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
  - 11.4.2 the Seller shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## **12 INTELLECTUAL PROPERTY RIGHTS**

- 12.1 Unless otherwise agreed between the parties, all Intellectual Property Rights in and to the Products belong to the Seller and/or its licensors.
- 12.2 The Buyer shall not modify, adapt, develop, reverse engineer, decompile, or disassemble any Products except to the extent that it's right to do so cannot be excluded under applicable law.
- 12.3 Software forming part of, loaded within or associated with the Products is proprietary to the Seller and may not be copied, used or supplied to any third party without the Seller's prior written consent.
- 12.4 The Seller shall at its expense defend any action against the Buyer and pay all damages and costs awarded against the Buyer (except to the extent that the Buyer is entitled to recover such sums under any policy of insurance) based on a claim that any of the



Products constitute an infringement of any Intellectual Property Rights or misuse any confidential information belonging to any third party (a "**Claim**")

**PROVIDED THAT:**

- 12.4.1 the Seller shall be notified promptly in writing by the Buyer of any notice of a Claim;
  - 12.4.2 the Seller shall have the sole control of the defence of any action on a Claim and all negotiations for settlement or compromise;
  - 12.4.3 the Buyer shall allow its name to be used in proceedings if necessary and provide all reasonable assistance in defending any action; and
  - 12.4.4 the Buyer shall take all steps reasonably possible to mitigate or reduce any damages and costs which may be awarded against it as a result of a Claim.
- 12.5 If a Claim is successful or the Seller considers that it is likely to be successful, the Seller may, at its option or as part of a settlement or compromise, modify the Products so that they are non-infringing or terminate the Contract in so far as it applies to those Products subject to the Claim, in which latter case the Seller shall refund to the Buyer the price paid for such Products less depreciation on a straight line basis over the life of the Products as determined by the Seller.
- 12.6 In no event shall the Seller have any liability under this condition 12 with respect to any Claim based on the use of the Products in combination with any other product or equipment not supplied by the Seller.
- 12.7 This condition 12 states the entire obligation and liability of the Seller with respect to infringement of Intellectual Property Rights.

**13 RISK AND TITLE**

- 13.1 Risk of damage to or loss of the Products shall pass to the Buyer on delivery or deemed delivery to the Delivery Address in accordance with these Conditions.
- 13.2 Notwithstanding delivery and the passing of risk in the Products, or any other provisions of these Conditions, the ownership of the Products shall not pass to the Buyer and shall be retained by the Seller until the Seller has received in full, in cleared funds, all sums in respect of the Products and all other sums which are or which become due from the Buyer on any account.
- 13.3 Until ownership of the Products has passed to the Buyer, the Buyer shall:
- 13.3.1 hold all goods owned by the Seller on a fiduciary basis as the Seller's bailee;
  - 13.3.2 store them in such a way that they are clearly identifiable as the Seller's property;
  - 13.3.3 maintain records of such goods, identifying them as the Seller's property; and
  - 13.3.4 keep them in satisfactory condition, properly stored, protected and insured.
- 13.4 The Buyer shall be entitled to resell or use such goods in the ordinary course of its business before ownership has passed to it but shall account to the Seller in respect of the proceeds of sale or otherwise of such goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any other monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly identified, stored, protected and insured.
- 13.5 The Buyer shall maintain records of the persons to whom it sells or disposes of such goods and of the payments made by such persons for such goods and will allow the Seller to inspect these records and the goods themselves on request. The Seller shall be entitled to trace the proceeds of sale or otherwise of such goods.

- 13.6 For the avoidance of doubt, the Products and all other goods supplied to the Buyer by the Seller which are in the Buyer's possession shall be presumed to belong to the Seller unless the Buyer can prove otherwise.
- 13.7 The Buyer's right to possession of the Products shall terminate immediately if:
- 13.7.1 the Seller has a right to terminate the Contract under condition 15.1 (irrespective of whether the Seller terminates the Contract); or
  - 13.7.2 the Buyer encumbers or in any way charges any of the Products.
- 13.8 Until such time as the property in any Products owned by the Seller passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up such Products to the Seller. The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 13.9 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the Seller. But if the Buyer does so, all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 13.10 On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this condition 13 shall remain in effect.

#### **14 LAWS AND REGULATIONS**

- 14.1 The Buyer shall comply with all laws and regulations relating to the ownership and use of the Products including health and safety requirements.
- 14.2 WEEE & Battery Regulations. IDEAL INDUSTRIES Ltd hereby discharges all producer obligations dealing with all waste, collecting, treatment and recycling arising from or relating to the goods; in accordance with the WEEE Regulations WEEE regulations (2012) and the Waste Battery and Accumulator Regulations (2011).
- 14.3 The Buyer shall obtain all necessary licenses or permits required to carry on its business and distribute Products. Buyer shall comply with all applicable laws, rules and regulations related to the sale of Products, whether such laws, rules or regulations are those in effect in the Territory or in the United States of America, including without limiting the generality of the foregoing, any import/export restrictions and regulations in force related to the sale of Products.

#### **15 TERMINATION**

- 15.1 The Seller shall, without limiting any other right or remedy available to it, be entitled to suspend any further deliveries under and/or terminate the Contract forthwith by notice in writing to the Buyer if the Buyer:
- 15.1.1 commits an irremediable breach of the Contract, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same; or
  - 15.1.2 (being a company) is unable to pay its debts within the meaning of s.123 of the Insolvency Act 1986 or shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors or a receiver, administrator, administrative receiver or similar officer is appointed over all or a substantial part of the undertaking or assets of the Buyer or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Buyer (whether by the presentation of a winding up

petition or otherwise) or for the making of an administration order (other than for the purposes of reconstruction or amalgamation); or

- 15.1.3 (being an individual) is unable to pay his debts within the meaning of s.268 of the Insolvency Act 1986 or a petition is presented for his bankruptcy or the Buyer makes an arrangement or compromise for the benefit of his creditors whether pursuant to the provisions of Part VIII Insolvency Act 1986 or otherwise; or
  - 15.1.4 (being a partnership) is unable to pay its debts or a petition is presented for the winding up of the Buyer under the provisions of the Insolvent Partnerships Order 1994 whether or not involving individual insolvency proceedings against the Buyer's partners and presented by creditors or by the partners themselves or such a petition is presented in conjunction with bankruptcy or individual insolvency or petitions against any partner or if the Buyer enters into any composition, scheme of arrangement or voluntary arrangement including the business and assets of the Buyer or the share of any partner or in the event of any action for a partnership account and/or a winding up of or a dissolution of the Buyer under the Partnership Act 1890 or if any of the states of affairs or events described in condition 15.1.3 exist or occur to or in relation to any of the partners or if the Buyer is dissolved; or
  - 15.1.5 ceases or threatens to cease to carry on business: or if the Seller reasonably apprehends that any of such events is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 15.2 In the event of termination by the Seller pursuant to condition 15.1 above then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under it without any liability to the Buyer and, if the Products have already been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Seller shall be entitled to charge interest (both before and after any judgment) at the rate of 4% over the base rate from time to time of the Bank of England from the time of such cancellation or suspension until the Seller receives payment.

## **16 NOTICES**

- 16.1 Subject to condition 16.3, any notice required to be given under any Contract, shall be in writing and shall be delivered personally, or sent by pre-paid recorded delivery (or, for notices sent internationally, international registered post) or sent by fax or email to the other party's address, fax number or email address, as appropriate, as specified by the relevant party by notice in writing to the other party.
- 16.2 A notice delivered by hand shall be deemed to have been received when delivered (or, if delivery is not in business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by post shall be deemed to have been received at the time when it would have been delivered in the normal course of post. A notice sent by fax or email shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).
- 16.3 A notice to terminate a Contract shall not be validly given if sent by email.

## **17 ASSIGNMENT**

- 17.1 The Seller may assign the Contract or any part of it to any person, firm or company.
- 17.2 The Contract is personal to the Buyer and the Buyer may not assign, transfer, sub-contract or otherwise part with the Contract or any right or obligation under it without the Seller's prior written consent.

## **18 FORCE MAJEURE**

The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Products ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 60 days, the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract.

## **19 VARIATION**

The Seller reserves the right to revise and amend these Conditions from time to time. Each Contract will be subject to the conditions in force at the time that Products are ordered if the Seller notifies the Buyer of the change to these Conditions before confirming the order (in which case the Seller shall assume that the Buyer has accepted the change to the Conditions, unless the Buyer notifies the Seller to the contrary).

## **20 GENERAL**

- 20.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.
- 20.2 If any provision of the Contract or these Conditions are found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract or these Conditions and the remainder of such provision shall continue in full force and effect.
- 20.3 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 20.4 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 20.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 20.6 These Conditions and any dispute or claim arising out of or in connection with them or its subject matter shall be governed by and construed in accordance with English law.
- 20.7 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Conditions or its subject matter (but the Seller shall be entitled to enforce any judgement obtained in an English Court in the courts of another relevant jurisdiction).

## STANDARD TERMS AND CONDITIONS OF PURCHASE

### 1 INTERPRETATION

- 1.1 In these terms and conditions, the following words or expressions shall have the following meanings unless the context otherwise requires:

**“Casella”** Casella CEL, Casella Monitor and/or any other member of the Casella division of IDEAL INDUSTRIES Ltd, a company incorporated in England with registered number 01824671 and whose registered office is c/o CMD Limited, Sycamore Road, Eastwood Trading Estate, Rotherham, South Yorkshire S65 1EN.

**“Goods”** the goods described overleaf whether raw materials, components, finished products or services and where the context so admits includes any individual item(s) thereof.

**“Supplier”** the person named overleaf as Supplier of the Goods and where the context so admits includes the officers, employees and agents of the Supplier.

**“Supplier’s Documents”** all or any quotation, invitation, invoice offer or acceptance or other document issued by the Supplier relating to the Goods.

**“Purchase Price”** the price stated overleaf is the purchase price of the goods.

**“Anticipated Delivery Date”** the date stated overleaf or agreed by Casella as the date for delivery of the Goods hereunder.

**“Delivery Date”** the date on which the Goods are actually delivered to the delivery address stated overleaf during normal business hours.

**“Warranty Period”** a period of 18 consecutive months commencing on the Delivery Date.

- 1.2 Condition headings are included for convenience only and are not to be taken into account in construing the Conditions to which they relate.

### 2 GENERAL

- 2.1 Any contracts between Casella and the Supplier for the purchase of Goods by Casella (and any quotation invitation offer and acceptance relating thereto) shall automatically incorporate these terms and conditions and the performance specifications (if any) furnished by the Supplier to Casella in respects of the Goods. The terms and conditions contained herein shall prevail over any other terms and conditions incorporated in or attached to the Supplier’s Documents or contained in any oral intimation and any other terms or conditions shall not form part of the contract between Casella and the Supplier unless expressly agreed in writing, signed on behalf of both the Supplier and Casella specifically in pursuance of this Condition 2.

- 2.2 No waiver or variation of any of these terms and conditions shall be effective unless it is in writing and signed by or on behalf of both the Supplier and Casella and stated to be made specifically in pursuance of this Condition 2. Any such waiver or variation shall be effective for the purposes of that particular transaction only and all other terms and conditions herein shall remain in full force and effect.

### 3 PURCHASE PRICE

The Purchase Price includes the Supplier’s costs of transporting the Goods to the delivery address stated overleaf and insuring it in the course of transit to such delivery address but does not include value added tax or any other similar or substituted tax imposed by the reference to the sale of the Goods hereunder.

## **4 DELIVERY, TITLE AND RISK**

- 4.1 In no circumstances shall the Delivery Date be more than (7) days beyond the Anticipated Delivery Date and Casella shall, without prejudice to its rights under Condition 7.1, be entitled to cancel this contract in the event that the Supplier breaches its obligation under this Condition and for this purpose. TIME IS OF THE ESSENCE.
- 4.2 The Supplier shall deliver the Goods to the delivery address stated in the purchase contract during normal business hours.
- 4.3 All advice notes, dispatch notes and invoices must refer to the Casella Order Number to which they apply.
- 4.4 Title in the Goods (both legal and beneficial) shall pass to Casella on the Delivery Date. The goods shall in all respects be at the risk of the Suppliers until the Goods have been successfully off loaded at the delivery address to the satisfaction of Casella.

## **5 DRAWINGS**

- 5.1 All drawings and other documents or things supplied by Casella will, unless otherwise agreed in writing, remain the property of Casella and will be returned to Casella immediately on request and they and the terms of this contract shall be treated by the Supplier as confidential and shall not be communicated to any other person or used by the Supplier for any purpose other than in connection with this contract.
- 5.2 Goods manufactured by the Supplier to, or based upon, a Casella design must not be sold, hired or otherwise disposed of to any other person without the prior written authority of Casella and the Supplier must refer to Casella all enquiries received for such Goods.

## **6 WARRANTY**

- 6.1 The Supplier warrants to Casella that:
  - 6.1.1 On the Delivery Date Casella will acquire title to the Goods free from all liens, charges and encumbrances.
  - 6.1.2 If the Goods are used in accordance with the operating instructions (if any) notified by the Supplier to Casella in connection herewith and maintained in accordance to the maintenance instructions (if any) so notified they will during the Warranty Period fulfil the performance specifications referred to in Condition 2.1 and be free from defects in materials or workmanship.
  - 6.1.3 Subject to fair wear and tear and without prejudice to the rights of Casella under Condition 7.1 it shall replace the Goods which are found to be defective through faulty workmanship or materials free of charge or refund the purchase price of the Goods at Casella's option during the Warranty Period. All reasonable expenses of Casella in returning the Goods will be promptly refunded to Casella in the event that the Equipment is found to be so defective. Casella shall be under no obligation to return the Goods if it is impractical to do so.

## **7 INDEMNITIES**

- 7.1 The Supplier shall keep Casella indemnified 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 professional costs and expenses) suffered or incurred by Casella as a result of or in connection with:
- 7.1.1 any claim made against Casella by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the contract by the Supplier, its employees, agents or subcontractors; and
  - 7.1.2 any claim brought against Casella for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
  - 7.1.3 any claim brought against Casella as a result of non-compliance by the Supplier with the provisions of the Health and Safety at Work Act 1974 and the regulations and codes of practice issued thereunder from time to time and any statutory modification or re-enactment thereof for the time being in force so far as the same may be applicable.
- 7.2 This Condition 7 shall survive termination of any contract which incorporates these terms and conditions.
- 7.3 The Supplier acknowledges that it is in a better position than Casella to ascertain the risk of any defect appearing in the Goods and any damage which may result therefrom and the safety of the Goods when properly used and to prevent delay in delivery of the Goods to Casella and the infringement of intellectual property rights belonging or allegedly belonging to third parties and THE SUPPLIER ACKNOWLEDGES THAT THE INDEMNITIES CONTAINED IN THESE TERMS AND CONDITIONS ARE IN ALL CIRCUMSTANCES REASONABLE.

## **8 DEFAULT BY SUPPLIER**

- 8.1 If the Supplier shall make any default in or commit any breach of its obligation to Casella or if before the Delivery Date it shall make or offer to make any arrangement or composition with creditors, or commit any act of bankruptcy or if any petition or receiving order in bankruptcy shall be made against it or if the Supplier is a limited company and before the Delivery Date a resolution is passed for its winding up or liquidation or a petition is presented to a court for its dissolution, winding up or liquidation or there is appointed a receiver of the Suppliers then Casella shall be entitled (without prejudice to any other right it may have) to rescind each and every contract between Casella and the Supplier.

## **9 FORCE MAJEURE**

- 9.1 Neither Casella nor the Supplier shall be liable for any failure by it to perform or delay any obligation herein undertaken by it caused by any act of God, war, Government action, storms, fire, tempest, strike, lock-out or any other circumstances beyond its reasonable control.

## **10 GOVERNING LAW**

The contract shall be deemed to have been made in England and its interpretation and performance shall in all respects be governed by English law.

## **11 ANTI-BRIBERY COMPLIANCE**

11.1 The Supplier shall:

- 11.1.1 comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
- 11.1.2 comply with any policies regarding ethics and anti-bribery that Casella may supply to the Supplier from time to time;
- 11.1.3 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 11.1.4 have and shall maintain in place throughout the duration of the relevant contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
- 11.1.5 promptly report to Casella any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the supply of Goods in accordance with these terms and conditions; and
- 11.1.6 immediately notify Casella in writing if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier, and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of each contract which is subject to these terms and conditions.

11.2 Breach of this Condition 11 by the Supplier shall be deemed a serious breach for the purpose of Condition 8.1.

11.3 The Supplier shall ensure that any person associated with the Supplier who is providing Goods to Casella does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Condition 11 ("Relevant Terms"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Casella for any breach by such persons of any of the Relevant Terms.

11.4 For the purpose of this Condition 11, the meaning of "adequate procedures" and "foreign public official" and whether a person is "associated" with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purpose of this Condition 11, a person associated with the Supplier includes but is not limited to any agent, delegate or subcontractor of the Supplier.