

TRIALS EQUIPMENT (UK) LTD – TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

The Customer's attention is particularly drawn to the provisions of clause 12 (Limitation of liability).

1. INTERPRETATION

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

1.1 Definitions:

Bespoke Goods	Goods made to the specification of a particular Customer.
Brochures	the Wintersteiger, Trails Equipment or SAMPO brochures, copies of which can be obtained from Trials Equipment.
Business Day	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Commencement Date:	has the meaning given in clause 2.2.
Conditions	these terms and conditions as amended from time to time in accordance with clause 16.8.
Contract	the contract between Trials Equipment and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
Contract Price	the price payable for the Goods and/or Services under a Contract.
Control	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
Customer	the person or firm who purchases the Goods and/or Services from Trials Equipment.
Delivery Location	has the meaning given in clause 4.2.
Force Majeure Event	has the meaning given to it in clause 15.
Goods	the goods (or any part of them) set out in the Order.
Goods Specification	any specification for the Goods, including any relevant plans or drawings, that is agreed by the Customer and Trials Equipment which in the case of Bespoke Goods will be set out in Trials Equipment's quotation.
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.
Order	the Customer's order for the supply of Goods and/or Services, as made by the Customer's acceptance of Trials Equipment's quotation by

telephone or email, or (where no quotation is provided) as referred to in the telephone call between the Customer and Trials Equipment or set out in the Customer's email.

Services the services supplied by Trials Equipment to the Customer as set out in the Service Specification.

Service Specification the description or specification for the Services provided verbally or in writing by Trials Equipment to the Customer.

Trials Equipment Trials Equipment (UK) Ltd registered in England and Wales with company number 04216079.

Trials Equipment Materials has the meaning given in clause 8.1.7.

1.2 Interpretation:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors and permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.5 A reference to **writing** or **written** includes email but not fax.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when Trials Equipment issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by Trials Equipment and any descriptions of the Goods or illustrations or descriptions of the Services contained in Trials Equipment's catalogues, brochures or other printed matter are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by Trials Equipment shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS

3.1 The Goods are (in the case of Bespoke Goods) described in the Goods Specification and (in the case of all other Goods) in the quotation.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify Trials Equipment 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 reasonable professional costs and expenses) suffered or incurred by Trials Equipment arising out of or in connection with any claim made against Trials Equipment for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Trials Equipment's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 Trials Equipment reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and Trials Equipment shall notify the Customer in any such event.

4. DELIVERY OF GOODS

4.1 Trials Equipment shall ensure that:

4.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number, delivery destination, the type and quantity of the Goods (including the stock and serial number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.2 it states clearly on the delivery note any requirement for the Customer to return any packaging material to Trials Equipment. The Customer shall make any such packaging materials available for collection at such times as Trials Equipment shall reasonably request. Returns of packaging materials shall be at Trials Equipment's expense.

4.2 Unless otherwise agreed in writing by Trials Equipment, delivery of the Goods shall be made in accordance with Ex Works – Incoterms 2010. Accordingly, the Customer shall collect the Goods from Trials Equipment's premises at Hudson Hill, Heddingham Road, Wethersfield, Braintree, Essex CM7 4EH or such other location as may be agreed with the Customer before delivery (**Delivery Location**) within three Business Days of Trials Equipment notifying the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed at the time that Trials Equipment notifies the Customer that they are ready for collection at the Delivery Location.

4.4 If the Customer fails to take delivery of the Goods within ten Business Days of Trials Equipment notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Trials Equipment's failure to comply with its obligations under the Contract in respect of the Goods, Trials Equipment shall store the Goods until the Customer takes delivery of them, and charge the Customer for all related costs and expenses (including insurance).

4.5 If two months after the day on which Trials Equipment notified the Customer that the Goods were ready for collection the Customer has not taken delivery of them, Trials Equipment may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

4.6 Trials Equipment may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.7 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Trials Equipment shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Trials Equipment with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.8 If Trials Equipment fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Trials Equipment 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 Trials Equipment with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

5. QUALITY OF GOODS

5.1 Subject to clause 5.4, Trials Equipment warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall be free from material defects in design, material and workmanship.

- 5.2 Subject to clause 5.3, Trials Equipment shall, at its sole option repair or replace the defective Goods or refund the price of the defective Goods in full if:
- 5.2.1 the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - 5.2.2 Trials Equipment is given a reasonable opportunity of examining such Goods; and
 - 5.2.3 the Customer (if asked to do so by Trials Equipment) returns such Goods to Trials Equipment's place of business at the Customer's cost.
- 5.3 Trials Equipment shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- 5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
 - 5.3.2 the defect arises because the Customer failed to follow Trials Equipment'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;
 - 5.3.3 the defect arises as a result of Trials Equipment following any drawing, design or Goods Specification supplied by the Customer;
 - 5.3.4 the Customer alters or repairs such Goods without the written consent of Trials Equipment;
 - 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 5.3.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 The warranty in clause 5.1 shall not apply where the Goods are spare parts. In such case the Customer shall only be entitled to such warranty as is provided by the manufacturer of the Goods.
- 5.5 Except as provided in this clause 5, Trials Equipment shall have no liability to the Customer in respect of the Goods failure to comply with the warranty set out in clause 5.1.
- 5.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Trials Equipment.

6. **TITLE AND RISK**

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the earlier of Trials Equipment receives payment in full (in cash or cleared funds) for the Goods and any other goods that Trials Equipment has supplied to the Customer in which case title to the Goods shall pass at the time of payment of all such sums.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable (the Customer shall not deface or tamper with the Goods) as Trials Equipment's property;
 - 6.3.2 not remove, deface or obscure any identifying mark or packaging on or serial number relating to the Goods;
 - 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Trials Equipment's behalf from the date of delivery;
 - 6.3.4 notify Trials Equipment immediately if it becomes subject to any of the events listed in clause 13.2.2 to clause 13.2.4; and

- 6.3.5 give Trials Equipment such information relating to the Goods as Trials Equipment may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may use the Goods in the ordinary course of its business (but not otherwise) before Trials Equipment receives payment for the Goods. The Customer does not have the right to resell the Goods before that time, however, if the Customer does resell the Goods:
 - 6.4.1 it does so as principal and not as Trials Equipment's agent; and
 - 6.4.2 title to the Goods shall pass from Trials Equipment to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.2.2 to clause 13.2.4, then, without limiting any other right or remedy Trials Equipment may have:
 - 6.5.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - 6.5.2 Trials Equipment may at any time:
 - 6.5.2.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - 6.5.2.2 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.

7. **SUPPLY OF SERVICES**

- 7.1 Trials Equipment shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 Trials Equipment shall use all reasonable endeavours to meet any performance dates for the Services agreed with the Customer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 Trials Equipment reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Trials Equipment shall notify the Customer in any such event.
- 7.4 Trials Equipment warrants to the Customer that the Services will be provided using reasonable care and skill.

8. **CUSTOMER'S OBLIGATIONS**

- 8.1 The Customer shall:
 - 8.1.1 ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
 - 8.1.2 co-operate with Trials Equipment in all matters relating to the Services;
 - 8.1.3 provide Trials Equipment, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Trials Equipment to provide the Services;
 - 8.1.4 provide Trials Equipment with such information and materials as Trials Equipment may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 8.1.5 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;

- 8.1.6 comply with all applicable laws, including health and safety laws;
 - 8.1.7 keep all materials, equipment, documents and other property of Trials Equipment (**Trials Equipment Materials**) at the Customer's premises in safe custody at its own risk, maintain Trials Equipment Materials in good condition until returned to Trials Equipment, and not dispose of or use Trials Equipment Materials other than in accordance with Trials Equipment's written instructions or authorisation; and
 - 8.1.8 comply with any additional obligations as set out in the Service Specification and the Goods Specification.
- 8.2 If Trials Equipment'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**):
- 8.2.1 without limiting or affecting any other right or remedy available to it, Trials Equipment 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 Trials Equipment's performance of any of its obligations;
 - 8.2.2 Trials Equipment shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Trials Equipment's failure or delay to perform any of its obligations as set out in this clause 8.2; and
 - 8.2.3 the Customer shall reimburse Trials Equipment on written demand for any costs or losses sustained or incurred by Trials Equipment arising directly or indirectly from the Customer Default.

9. CHARGES AND PAYMENT

- 9.1 The price for Goods:
- 9.1.1 shall be the price set out in Trials Equipment's quotation or, if no price is quoted; and
 - 9.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.
- 9.2 The charges for Services shall be calculated on a time and materials basis:
- 9.2.1 the charges shall be calculated in accordance with Trials Equipment's hourly fee rates, as set out in Trials Equipment's written quotation or as verbally confirmed to the Customer over the telephone;
 - 9.2.2 Trials Equipment's hourly rates for each individual person are calculated on the basis of an 8.5 hour day from 8.00 am to 5.00 pm worked on Business Days (or such other 8.5 hour period on a Business Day agreed by Trials Equipment with the Customer) exclusive of a 30 minute lunch break (**Normal Working Hours**);
 - 9.2.3 Trials Equipment shall be entitled to charge the following overtime rates of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the Normal Working Hours referred to in clause 9.2.2:
 - 9.2.3.1 on a Business Day – time and a half;
 - 9.2.3.2 on a Saturday – time and a half;
 - 9.2.3.3 on a Sunday or bank holiday – double time,
 - 9.2.4 Trials Equipment shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Trials Equipment engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses and mileage (from the individual's point of start for the journey to the Customer or other designated destination), and for the cost of services provided by third parties and required by Trials Equipment for the performance of the Services, and for the cost of any materials.

- 9.3 Trials Equipment reserves the right increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Trials Equipment that is due to:
- 9.3.1 any factor beyond the control of Trials Equipment (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 9.3.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - 9.3.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Trials Equipment adequate or accurate information or instructions in respect of the Goods.
- 9.4 In respect of Goods, Trials Equipment shall invoice the Customer on or at any time after completion of delivery. In respect of Services, Trials Equipment shall invoice the Customer on completion of the Services.
- 9.5 The Customer shall pay each invoice submitted by Trials Equipment:
- 9.5.1 on the earlier of the date specified on the invoice or the 20th day of the calendar month following the month in which the invoice was submitted to the Customer; and
 - 9.5.2 in full and in cleared funds to a bank account nominated in writing by Trials Equipment, and
- time for payment shall be of the essence of the Contract.
- 9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Trials Equipment to the Customer, the Customer shall, on receipt of a valid VAT invoice from Trials Equipment, pay to Trials Equipment such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.7 If the Customer fails to make a payment due to Trials Equipment under the Contract by the due date, then, without limiting Trials Equipment's remedies under clause 13 (Termination), the Customer:
- 9.7.1 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 9.7.1 will accrue each day at 5% a year above the Bank of England's base rate from time to time, but at 5% a year for any period when that base rate is below 0%;
 - 9.7.2 shall indemnify Trials Equipment 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 reasonable professional costs and expenses) suffered or incurred by Trials Equipment arising out of or in connection with the failure to pay on the due date; and
 - 9.7.3 shall not be entitled to any discounts or other concessions previously agreed with Trials Equipment.
- 9.8 All amounts due under the Contract 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).
10. **INTELLECTUAL PROPERTY RIGHTS**
- 10.1 All Intellectual Property Rights in in or arising out of or in connection with any Bespoke Goods (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Trials Equipment.
- 10.2 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 Trials Equipment.
- 10.3 The Customer grants Trials Equipment a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Trials Equipment for the term of the Contract for the purpose of providing the Bespoke Goods and/or Services to the Customer.

11. **CONFIDENTIALITY**

11.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, 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, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors 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 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

12. **LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

12.1 The restrictions on liability in this clause 12 apply to every 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 which cannot legally be limited, including liability for:

12.2.1 death or personal injury caused by negligence;

12.2.2 fraud or fraudulent misrepresentation; and

12.2.3 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).

12.3 Subject to clause 12.2 and clause 12.4, Trials Equipment's total liability to the Customer shall not exceed £100,000.

12.4 This clause 12.4 sets out specific heads of excluded loss:

12.4.1 Subject to clause 12.2, the types of loss listed in clause 12.4.2 are wholly excluded by the parties.

12.4.2 The following types of loss are wholly excluded:

12.4.2.1 loss of profits;

12.4.2.2 loss of sales or business;

12.4.2.3 loss of agreements or contracts;

12.4.2.4 loss of anticipated savings;

12.4.2.5 loss of use or corruption of software, data or information;

12.4.2.6 loss arising directly or indirectly from collected data, analysis or results;

12.4.2.7 loss of or damage to goodwill; and

12.4.2.8 indirect or consequential loss.

12.5 Trials Equipment has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.6 Unless the Customer notifies Trials Equipment that it intends to make a claim in respect of an event within the notice period, Trials Equipment shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

12.7 This clause 12 shall survive termination of the Contract.

13. **CANCELLATION AND TERMINATION**

13.1 The Customer shall have no right to cancel or terminate the Contract whole or in part without the prior written consent of Trial's Equipment. If Trials Equipment:

13.1.1 does consent to the Customer cancelling the Contract, the Customer shall pay to Trials Equipment, as liquidated damages, 30% of the Contract Price. The parties confirm that these liquidated damages are reasonable and proportionate to protect Trial's Equipment interest in performance.

13.1.2 does consent to the Customer terminating the Contract, the provisions of clause 14 shall apply to such termination.

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

13.2.1 the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;

13.2.2 the Customer 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), 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;

13.2.3 the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

13.2.4 the Customer's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

13.2.5 the Customer fails to pay any amount due under the Contract on the due date for payment; or

13.2.6 there is a change of control of the Customer.

13.3 Without affecting any other right or remedy available to it, Trials Equipment may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Trials Equipment if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.2.2 to clause 13.2.4, or Trials Equipment reasonably believes that the Customer is about to become subject to any of them.

14. **CONSEQUENCES OF TERMINATION**

14.1 On termination of the Contract:

14.1.1 the Customer shall immediately pay to Trials Equipment all of Trials Equipment's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Trials Equipment shall submit an invoice, which shall be payable by the Customer immediately on receipt and in the case of termination under clause 13.2.2 to clause 13.2.5 (inclusive) the Customer shall not be entitled to any discounts, deductions or other concessions previously agreed with Trials Equipment;

14.1.2 the Customer shall return all of Trials Equipment Materials or Goods which have not been fully paid for. If the Customer fails to do so, then Trials Equipment 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 this Contract.

14.2 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.

14.3 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**

Subject to clause 9.7.1, neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**).

16. **GENERAL**

16.1 **Assignment and other dealings**

16.1.1 Trials Equipment 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 Trials Equipment.

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:

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

16.2.2 Any notice shall be deemed to have been received:

16.2.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and

16.2.2.2 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 at the time recorded by the delivery service.

16.2.3 This clause 16.2 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.

16.2.4 A notice given under the Contract is not valid if sent by email or fax.

16.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 16.3 shall not affect the validity and enforceability of the rest of the Contract.

16.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 16.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 16.6 **Entire agreement.**
- 16.6.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 16.6.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of 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 misrepresentation based on any statement in the Contract.
- 16.6.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 16.7 **Third parties rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 16.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 16.9 **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.
- 16.10 **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.