

# Smiley Monroe Limited (the “Supplier”) General Terms and Conditions of Sale

**A/** The contract between the Supplier and the Customer (referred to as the “**Agreement**”) consists of the following:

- i. an Order and the schedule(s) to that Order;
- ii. these General Terms and Conditions of Sale and its schedule (“**Terms**”); and
- iii. any documents expressly incorporated into the Agreement or expressly referred to on an Order.

**B/** The Agreement embody the entire legal and contractual relationship between the parties relating to the subject matter of the Agreement and, except in the case of any fraudulent misrepresentation made by either party in connection with the subject matter of the Agreement and/or except as may be expressly referred to or referenced in the Agreement, terminates, cancels and supersedes all prior representations, agreements or understandings (written or oral) with respect to the Agreement and its subject matter. In the event of any conflict or ambiguity between or among the terms of any of the documents forming the Agreement, a term contained in a document higher in the above list shall have priority over one contained in a document lower in the list.

**C/** Any terms and conditions that the Customer seeks to impose or to incorporate into the Agreement or which are implied by law, trade custom, practice or course of dealing are explicitly excluded from the Agreement and rejected by Supplier.

**D/** Any request to order any Products or Services by the Customer is an offer only and shall not be incorporated into the Agreement or constitute an Order. An Agreement and an Order is formed only at the time Supplier issues to the Customer its written acceptance of the Customer's order in accordance with these Terms (“**Order Acknowledgement**”).

## 1 Definitions

In this Agreement:

- 1.1 “**Affiliate**” means, with respect to any party, any person or entity controlled by, controlling or under common control or having a material financial relationship with such party;
- 1.2 “**Confidential Information**” means any and all tangible and intangible information (whether written or otherwise recorded or oral) of a party that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; (b) a party designates as confidential or, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes, without limitation: (i) nonpublic information relating to a party's technology or know-how, customers, business plans, promotional and marketing activities, finances and other business affairs; and (ii) third-party information that a party is obligated to keep confidential. Confidential Information does not include information which either party can demonstrate by competent written evidence: (a) is now, or hereafter becomes generally known or available to the public, through no fault of the receiving party; (b) is known by the receiving party prior to the time of receiving such information; (c) is hereafter furnished to receiving party by a third party, as a matter of right and without restriction on disclosure; (d) is disclosed pursuant to the prior written consent of non-receiving party; (e) is required to be disclosed by the receiving party pursuant to a court order or as otherwise required by law; provided, however, that receiving party notifies non-receiving party within sufficient time to allow noni to contest such order; or (f) is independently developed by persons at receiving party who had no access to the Confidential Information;
- 1.3 “**Customer**” means the party who places an order for Products and/or Services from Supplier and Supplier accepts such order in accordance with these Terms;
- 1.4 “**Customer Mark**” means the Customer's trade mark, as notified to and agreed by the Supplier, which may be replaced from time to time as mutually agreed (such agreement not to be unreasonably withheld or delayed by the Supplier);

- 1.5 “**Intellectual Property Rights**” means copyright, database rights and patents (including patent applications), technical information, specifications, designs, drawings, data, processes, formulae, know-how, internet domain names, URLs, trade secrets, rights to inventions, moral rights, rights in get-up, goodwill, rights in designs, rights to use and protect confidential information and all other intellectual property rights (whether registered or unregistered and including all applications and right to apply for such rights) and equivalent rights or forms of protection, now or in the future, anywhere in the world;
- 1.6 “**Know-how**” means any accretion to the knowledge, skill, experience, or other technical or commercial knowledge of either party acquired in the process of developing or supplying the Products or performing the Services (or any part), whether capable of being recorded or not (and if recorded, recorded in any form);
- 1.7 “**Order**” means an order for Products and/or Services as accepted in writing by the Supplier by the Order Acknowledgement and formed in accordance with the provisions of section D/ above;
- 1.8 “**Products**” means the products (including any instalment of the products or any parts for them) set out in an Order which the Supplier is to supply in accordance with the Agreement;
- 1.9 “**Product Description**” means the latest product description, however described, applicable to the Products published by the manufacturer and/or the Supplier at the date of the Supplier's acceptance of the relevant Order;
- 1.10 “**Service(s)**” means the work referred to on an Order which the Supplier will perform in accordance with the Agreement;
- 1.11 “**Service Specification**” means the description or specification for the Services as provided or made available by the Supplier or otherwise agreed in writing by the parties;
- 1.12 “**Supplier**” means Smiley Monroe Limited or any of its Affiliates;
- 1.13 “**Zip Clip Mark**” means any trade mark or trade name relating to the Zip Clip Product, including without limitation, the UK trade mark with registration number UK00003362356 and EU trade mark with registration number 018005751; and US trade mark with registration number 5965087; and
- 1.14 “**Zip Clip Product**” means the Supplier's mechanically fastened replacement conveyor belt product described as “Zip Clip”.

## 2 Supply

- 2.1 Except as otherwise provided by the Supplier in writing to Customer, each Order, together with the documents identified in Section A/, shall be regarded as a separate Agreement.
- 2.2 All Products are supplied by reference only to their Product Description and, a bespoke specification agreed to in writing in advance by the Supplier (**Bespoke Specification**). Any other descriptive material provided by the Supplier to the Customer is provided to assist the Customer and does not form part of the Agreement or any contract and the Supplier is not legally responsible for its contents. The Customer acknowledges that it is responsible for selecting Products to achieve its required results based on the Products' intended uses.
- 2.3 The Customer is responsible for any structural work or the provision of any appliances necessary in order to enable the Supplier to deliver the Products and/or perform the Services, unless the parties agree in writing that the Supplier will undertake such work. The Customer is solely responsible for ensuring the Delivery Location (as defined in Section 4.1) is at the time of delivery, ready and capable for safe delivery of the Products and performance of the Services.
- 2.4 The Supplier may substitute products at the time of Delivery equivalent to the type of products ordered if the price of such substituted products is not increased and the Products delivered are of equivalent or higher specification than the products

# Smiley Monroe Limited (the “Supplier”) General Terms and Conditions of Sale

ordered by Customer.

- 2.5 Where the Order provides that the Supplier will undertake installation, the Supplier will install the Products at the Supplier's then current installation rates. Any installation charge shown on the Order is for installation during the Supplier's normal working hours. Any installation services performed outside of Supplier's normal working hours or any overtime worked by the Supplier will be subject to further charge. If the Order does not indicate that Supplier will install the Products, the installation of the Products is the sole responsibility of the Customer.
- 2.6 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 2.7 The Supplier reserves the right to amend the Order and 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 the Supplier shall notify the Customer in any such event.
- 2.8 The Customer will at all times provide all necessary access, assistance and information required by Supplier to facilitate the Supplier carrying out its obligations under the Agreement, including (without limitation) any additional obligations contained in the Order, Product Description and Service Specification.
- 2.9 To the extent that the Products are to be manufactured in accordance with a Bespoke Specification or Services are to be provided in accordance with instructions provided by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising of or in connection with the Supplier's use of such Bespoke Specification or instructions provided by the Customer.
- 2.10 In the event that any Order includes Zip Clip Product(s) and the Customer intends to re-sell such Zip Clip Products to any other party, the schedule to these Terms shall automatically be incorporated into and apply to this Agreement.

### 3 Price & Payment Terms

- 3.1 The price for any Product or Services, excluding value added tax or any other tax, duty, levy or the like which may be added to the amounts owed by the Customer, shall be the price expressly agreed to by the Supplier in the Order Acknowledgement.
- 3.2 Unless otherwise expressly agreed, all prices quoted do not include any charges, fees, duties, tariffs related to shipping, transporting, carriage, stowage or storage of any Products purchased by Customer.
- 3.3 The Supplier may invoice the Customer at or any time after: for Products, the earlier of (i) the despatch of the Products or (ii) the Supplier informing the Customer the Products are ready for collection; and for Services, completion of the Services.
- 3.4 The Customer shall pay amounts due to the Supplier under the Agreement in good and collected funds or in cash and in full without any deduction or set off within the earlier of 30 days from the date of an invoice or the Delivery of any Products, or the date on which any Products were made available to Customer for collection, or, in the case of Services, the date the Services are completed, except as otherwise agreed to in writing by the parties. The Supplier may charge interest on a day to day basis from the due date at the rate of 5% per annum over the Bank of England Base Rate in force from time to time until the payment is made in full. If, in Supplier's sole and absolute discretion, the financial condition of the Customer at any time does not justify continuance of production or shipment of any Products or providing any Services in accordance with the terms of payment specified in the Agreement, Supplier may require full or partial payment in advance. Time is of the essence with respect to any payment required by Customer under the Agreement.
- 3.5 If the Customer prevents or delays Delivery, installation or completion of any Product or Service then, in addition to any

other rights the Supplier may have, Customer shall pay to Supplier any sums that have been pre-paid or any other amounts that have been paid on behalf of Customer by Supplier by no later than 30 days after the date which the Supplier notifies the Customer it is ready to effect such Delivery, installation or completion (or 30 days after the date when the Supplier would have delivered or installed same or delivered or completed the Services but for being prevented by Customer or the Customer's delay, if this is earlier) except as otherwise expressly agreed between the parties. The Customer shall pay all of the Supplier's reasonable costs and charges that result from being prevented from delivering, installing or completion or resulting from such delay. In addition, if Supplier's performance is prevented or delayed by any act of omission of Customer or its agents, subcontractors, or employees, Supplier shall not be in breach of its obligations or otherwise liable for any costs, charges, or losses sustained or incurred by Customer.

- 3.6 Where the cost to the Supplier of performing the Agreement increases as a result of circumstances beyond the Supplier's reasonable control (including (without limitation) if any assumptions set out in the Product Description, Service Specification or on the Order Acknowledgement are not met in whole or in part and demonstrable increases in costs of raw materials or components), the Customer shall pay the Supplier's reasonable additional costs arising as a result of such circumstances by way of additional charges, which shall be invoiced and paid in accordance with the terms of the Agreement.
- 3.7 The Customer shall pay, at the same time as the principal sums to which they relate, delivery charges, any taxes (other than those assessed on the profits or gains of the Supplier) which are payable in connection with the supply of Products or the Services.

### 4 Delivery/Performance

- 4.1 Subject to the Customer complying with all of its obligations in this Agreement, the Supplier shall make or arrange for delivery of the Products to the location stated on the Order Acknowledgement (“**Delivery Location**”) or such other place as agreed to in writing by the parties, unless collection of the Products by or on behalf of the Customer has been agreed to in the Order Acknowledgement or otherwise by express written agreement of the parties, in which case collection shall be from the location agreed to by the parties. Delivery shall take place: on the arrival of the Products at the Delivery Location, immediately before unloading of the Product commences; or immediately prior to the commencement of loading in the case of a Customer collection (“**Delivery**”).
- 4.2 Any dates specified by the Supplier for delivery or collection of Products or performance of the Services are intended to be an estimate only and time for delivery shall not be construed as a fixed date or time unless specifically agreed to by Supplier in writing. If Supplier does not specify a date for delivery or collection of the Products or performance of Services, delivery/performance by Supplier will be within a reasonable time.
- 4.3 If Delivery of any Products or performance of any Service has not been made within 4 months of the estimated Delivery or performance date, the Customer may cancel its order with respect to the specific Product(s) or Service(s) provided that Customer has notified the Supplier in writing of the late Delivery or performance and given the Supplier 30 days from the date of receipt of such notice to complete the Delivery or performance.
- 4.4 Supplier shall not be liable for any any special, indirect, or consequential damages, including without limitation, lost revenues or profits to compensate the Customer for non-delivery or late Delivery of the Products or failure or delay in making the Products ready for collection or performance of the Services.
- 4.5 If the Customer fails to accept delivery or to collect any of the Products in accordance with the Agreement, then Delivery shall be deemed to have occurred on the date the Supplier has notified the Customer that the Products are ready for Delivery in accordance with the Order.
- 4.6 If the Customer fails to collect the Products or to take or accept delivery of the Products in accordance with the Agreement, the

# Smiley Monroe Limited (the "Supplier")

## General Terms and Conditions of Sale

Supplier:

the purchase price against return of the Products.

- 4.6.1 shall store the Products until delivery or collection takes place or it exercises its rights under Section 4.6.2 and may charge the Customer for all related costs and expenses (including insurance) incurred by Supplier; and
- 4.6.2 if fourteen days pass after the date on which the Supplier notified the Customer that the Products were ready for collection or Supplier attempted delivery and the Customer failed to collect or to accept delivery of such Products, the Supplier may resell or otherwise dispose of part or all of the Products. After deducting reasonable storage and all associated costs and any difference in the price received by Supplier in connection with the resale or other disposition of the Products and the price to be charged to Customer for the Products, refund all pre-paid amounts without prejudice to any other rights or remedies available to the Supplier.

### 5 Risk & Property

- 5.1 Risk of damage to or loss of the Products shall pass to the Customer upon Supplier making actual or deemed delivery of the Products or making the Products available for collection, whether or not title to such Products has passed to the Customer.
- 5.2 The Supplier shall not be liable for any loss of any kind to the Customer arising from any damage to or loss of the Products occurring after the risk of loss has passed to the Customer however caused, nor shall any liability of the Customer to the Supplier be diminished or extinguished by reason of such loss.
- 5.3 Title to the Products shall not pass to the Customer until all amounts due with respect to the Products, as well as any other amounts which are due to Supplier from the Customer on any account, have been paid to Supplier in full in good and collected funds.
- 5.4 The Customer shall not sell, pledge, transfer or assign the Products (for security or otherwise) until all amounts with respect to such Products are paid in full to Supplier without Supplier's written consent.
- 5.4.1 Until all amounts with respect to such Products are paid in full to Supplier, Customer shall (a) carefully maintain, and insure the Products; (b) protect such Products against any risks; and (c) take all reasonable measures in order that Supplier's rights and interests in such Products are neither compromised nor cancelled.
- 5.5 In the event of a breach of the Agreement, Supplier may utilize any remedies available to it at law or in equity, including, but not limited to granting the Supplier a licence to enter onto any premise on which the Products are kept to recover the Products in the event that Customer undergoes any event listed in Section 8.2 or fails to make payment in accordance with Section 3.4. In all cases, Purchaser will be responsible for Supplier's costs and expenses in exercising its rights.

### 6 Inspection

The Customer shall inspect the Products and Services immediately on receipt or completion thereof and shall within 20 days give written notice to the Supplier in detail of any ground on which the Customer alleges that the Products and/or Services are not in accordance with the Order, Service Specification, Bespoke Specification and/or Product Description or are defective in material or workmanship. If the Customer fails to give notice within such timeframe, the Products and Services shall be conclusively presumed to be in all respects in accordance with the Order, Service Specification, Bespoke Specification and Product Specification and free from any defect which would be apparent on reasonable examination of the Products and Services and the Customer shall be deemed to have accepted the Products and Services accordingly. In the event that the Customer establishes, to the Supplier's reasonable satisfaction, that the Products and/or Services are not in accordance with the Order, Service Specification, Bespoke Specification and/or Product Description or are so defective, the Customer's sole remedy in respect of such non-accordance or defects shall be limited, as the Supplier may elect, to the replacement of the Products and/or the re-performance of the Services or refund of

### 7 Warranties and the Supplier's Liabilities

- 7.1 The Supplier warrants that the Services will be performed with reasonable skill and care.
- 7.2 The Supplier warrants that the Products will conform in all material respects to their applicable Product Description and Bespoke Specification if applicable for the Product warranty period as stated on the Order Acknowledgement, or where no such period is stated, for the shorter period of 1,000 hours of use or the first twelve months following Delivery ("**Warranty Period**"). The Supplier shall not be liable for any defect that arises from, or that is due to, normal wear and tear, or the Customer's wilful damage, negligence, abnormal working conditions, incorrect or negligent handling by Customer or a third party, any unauthorized use of the Products, failure to follow the manufacturer and/or the Supplier's instructions, misuse or an unauthorised alteration or repair of the Products by anyone other than the Supplier or its agent.
- 7.3 Subject to Section 7.4.1, the Supplier shall have no further liability to the Supplier in respect of the Services' failure to comply with the warranty in Section 7.1 and/or the Products' failure to comply with the warranty in Section 7.2, provided that:
- 7.3.1 in the event any of the Services fail to comply with the warranty set forth in Section 7.1, the Supplier shall reperform or refund the amounts paid for the Services that were not performed in accordance with warranty set forth in Section 7.1; and
- 7.3.2 in the event any of the Products fail to comply with the warranty set forth in Section 7.2, the Supplier will, at its own expense and at its option, repair or replace such Products that fail to conform in all material respects to the applicable Product Description and/or Bespoke Specification, if relevant, due to faulty materials or workmanship; provided however, that the Supplier receives written notification from the Customer of such defect during the Warranty Period and Supplier is given an opportunity to inspect the alleged defect. The provisions of this Section 7.3.2 will not apply to defective materials or workmanship that would have been apparent on reasonable examination or inspection of the Products and/or Customer fails to provide notice of such defect in accordance with Section 6.
- 7.4 The liability of the Supplier to the Customer under or in connection with the Agreement, whether arising from contract, negligence or howsoever, shall be limited as follows:
- 7.4.1 in the case of liability arising from death or injury to persons as a result of any act or omission of the Supplier which is negligent (as defined by the Unfair Contract Terms Act 1977 section 1) or to any proven fraud on the part of the Supplier or of others for which it is at law responsible, there shall be no limit;
- 7.4.2 subject to Sections 7.3, 7.4.1 and 7.5, in the case of damage to physical or real property, the limit of liability shall be £1,000,000; and
- 7.4.3 subject to Section 7.3, 7.4.1 and 7.5, in respect of any liability other than that described in Section 7.4.2, the limit of liability shall be the lesser of: (i) the aggregate charges paid or payable for the Products throughout the duration of the contract; and (ii) £1,000,000,
- provided that the Supplier's overall maximum liability under the Agreement pursuant to sub-Sections 7.4.2 and 7.4.3 shall be limited to £1,000,000 in aggregate.
- 7.5 Subject to Section 7.4.1, the Supplier shall have no liability to the Customer for:
- 7.5.1 loss of profits, loss of revenue or loss of anticipated savings;
- 7.5.2 loss of contracts, business or opportunity, loss of goodwill or injury to reputation;
- 7.5.3 any special, consequential or indirect loss or damage; arising out of or in connection with the Agreement. This shall not affect the liability of the Customer to pay the charges or any other sums

# Smiley Monroe Limited (the "Supplier")

## General Terms and Conditions of Sale

falling due to the Supplier under the terms of the Agreement.

- 7.6 The Supplier shall have no liability to the Customer in respect of a breach of the Agreement unless the Customer has issued proceedings in respect of such breach within 18 months of the date when it first became aware of the circumstances constituting the breach.

### 8 Termination

- 8.1 In addition to any other remedies that Supplier may have in law or equity, if the Customer has committed a material breach of its obligations under the Agreement or it fails to perform or to comply with the terms and conditions of the Order, including, but not limited to, failing to pay any amounts due to Supplier in a timely manner, and the Customer has failed to cure such breach within 14 days from the date of written notice by Supplier of such breach, then the Supplier may, at its option, (i) immediately terminate either the Agreement or the specific Order, in whole or in part, or (ii) suspend its performance under the Agreement or the specific Order until such time as the breach is remedied. In such circumstances the Customer will have no claim against the Supplier based on the Supplier's suspension of its performance under the Agreement and/or the Order. Supplier also shall be entitled to amend the Agreement and/or the Order with respect to the Delivery and the payment terms to reflect the period in which the Agreement and/or the Order is suspended.

- 8.2 The Supplier may terminate the Agreement by written notice to the Customer, taking immediate effect, if the Customer: (a) being a company, has a petition presented for its liquidation or calls a meeting to propose a resolution for its liquidation (other than solely for solvent amalgamation or reconstruction) or has a petition presented for the appointment of an administrator or has a receiver or administrative receiver appointed over it or any of its assets or makes any voluntary arrangement with its creditors; or (b) being an individual (or if a firm or partnership, any of its partners or members), has a petition presented for his or her bankruptcy, or has a receiver appointed over his or her affairs, or makes any voluntary arrangement with his or her creditors or (in the case of a firm or partnership) proposes or has presented against it a petition for its dissolution; or (c) in any case described in Section 8.2(a) or (b) undergoes any analogous event in any jurisdiction where it is domiciled; or (d) the beneficial ownership of more than 50% of the issued share capital of the Customer (if a company) or the legal power to direct or cause the direction of the general management of the Customer changes.

### 9 Effects of Termination

- 9.1 Upon termination of any Order, any partial Order, or the Agreement for any reason, all sums due to the Supplier shall become immediately payable to the Supplier by the Customer without set-off or deduction.
- 9.2 Upon termination for whatever reason, the Customer will immediately deliver to Supplier at Customer's sole cost and expense any Supplier property to which it has no contractual right to retain and the Supplier may enter any premises to immediately recover and remove such property.

### 10 Export Terms

- 10.1 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 the Agreement, but if there is any conflict between the provisions of Incoterms and these Terms, the provisions of these Terms shall prevail:

- 10.1.1 where the Products are supplied for Delivery from Northern Ireland the provisions of this Section 10 shall (subject to any special terms agreed to in writing between the Supplier and the Customer) apply notwithstanding any other provision of these Terms;

- 10.1.2 it is the Customer's responsibility to obtain all such consents and licences as may be required from time to time under of the country of export of any Products and under the laws and regulations of any other region or country that may affect or regulate such resale, Delivery, export, or import, including, but not limited to any country of import.

- 10.1.3 unless otherwise agreed in writing between the Supplier and the Customer, the provisions of Section 4.3 shall apply in respect of Delivery and the Supplier shall in any event be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

### 11 Force Majeure

The Supplier reserves the right to defer the estimated dates for Delivery of Products or performance of Services or to cancel the Agreement or any affected Order or reduce the volume of the Products or scope of Services ordered by the Customer, without incurring any liability to the Customer, if it is prevented from, hindered, or delayed in the carrying on of its business due to any circumstances beyond the reasonable control of the Supplier. If the event in question continues for a continuous period in excess of 60 days, the Customer shall be entitled to give notice in writing to the Supplier to terminate the Agreement or an affected Order. Any sums due to the Supplier for part-performance at the time of termination by Customer shall become immediately payable to the Supplier by the Customer without set-off or deduction.

### 12 Cancellation

The Supplier may cancel the Agreement or any Order by giving written notice to the Customer at any time before the Products are delivered or, as the case may be, before the Services are performed. On giving such notice, the Supplier shall repay to the Customer any sums pre-paid by the Customer in respect of the relevant Order or Agreement, but not yet earned by Supplier due to delivery or performance. Any sums due to the Supplier as a result of part-performance of the Order or Agreement by Supplier shall become immediately payable by the Customer without set-off or deduction.

### 13 Intellectual Property Rights and Confidentiality

- 13.1 The Supplier, or its licensors, shall retain the right and title to all Intellectual Property Rights and other associated rights in any Products and the Services, and to any work or material created by the Supplier or its subcontractors in the course of providing the Products and Services, and to any other items supplied pursuant to any Order.

- 13.2 The Customer shall not reverse-engineer, decompile, disassemble or any other way alter the Products without Supplier's prior written consent, nor use or access all or any part of the Products or product of the Services in order to build a product or service which competes with the Products or Services.

- 13.3 The Customer is granted a non-exclusive and non-transferrable right to use the Intellectual Property Rights in the Products and Services solely, and to the minimum extent necessary, for the purpose of enjoying the Products and Services provided under the Agreement. The rights provided to the Customer under this clause 13.3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

- 13.4 The Customer shall: (a) not use any Intellectual Property Rights owned by the Supplier as, or as part of, any corporate, domain or business name unless agreed to in writing in advance by the Supplier; (b) not use or register any trade mark, design, domain name or logo which is identical or confusingly similar to any Intellectual Property Rights owned by the Supplier; (c) not take, authorise or knowingly tolerate any action whereby the Intellectual Property Rights owned or provided by Supplier under this Agreement shall or might be jeopardised or invalidated; and (d) immediately inform the Supplier of any actual or threatened infringement of the Supplier's Intellectual Property Rights of which it becomes aware.

- 13.5 The parties agree not to use or to disclose to any third party, other than for the purposes of performing the Agreement, any secret or Confidential Information or method of working revealed by the other party.

- 13.6 Nothing in the Agreement shall prevent either party from using any Know-how gained during the performance of the Agreement in the furtherance of its normal business, provided that any such use does not result in a disclosure of secret, Confidential Information or the infringement of any valid Intellectual Property

# Smiley Monroe Limited (the “Supplier”) General Terms and Conditions of Sale

Rights of either party.

13.7 All benefits associated with use of the Supplier's Intellectual Property Rights under this Agreement (including, for the avoidance of doubt, the Zip Clip Mark), including all goodwill arising, shall accrue solely to the benefit of the Supplier.

## 14 Changes

14.1 The Customer may at any time request and the Supplier may at any time recommend changes in the Products and/or the Services.

14.2 Subject to Section 2.4, neither party will be obliged to agree to any requested or recommended change but neither party will unreasonably withhold its agreement to such request or recommendation from the other.

14.3 The Supplier will advise the Customer of the likely impact of any requested or recommended change on the price and timescales for Delivery of the Products and/or performance of the Services. In respect of a change requested by the Customer, the Supplier reserves the right to make a reasonable charge for the preparation of the impact assessment.

14.4 Until such time as any requested or recommended change is formally agreed, the Supplier will, unless otherwise agreed, continue to provide the Products and/or perform the Services (and to be paid for same) as if such change had not been requested or recommended.

14.5 The parties will respond in writing to, or will meet to discuss, any requested or recommended change as soon as practicable. If the parties have not agreed in writing to any requested or recommended change within four weeks from the date of the request or recommendation, the matter will be addressed in accordance with the procedures set forth in Section 16. The parties' failure to comply with the provisions of this clause will not relieve the Customer from its obligations to accept and to pay for the Products and the Services that are delivered and/or performed.

14.6 Any agreement by the parties with respect to a requested or recommended change will not be valid as an amendment to the Order unless such agreement is in writing and signed by authorized representatives of the parties.

14.7 The Supplier shall be entitled to implement changes to a Product and/or Service without following the change procedures set forth in this Section 14 where the circumstances require such change and, in such cases, Supplier reserves the right to charge Customer for such services and to extend any relevant delivery dates accordingly.

## 15 General

15.1 The Customer may not assign or delegate any of its rights or obligations under the Agreement in whole or in part without the written consent of the Supplier. The Supplier may assign or delegate any of its rights or obligations under the Agreement to a subsidiary or holding Supplier (as defined in section 1159 of the Companies Act 2006).

15.2 Failure or delay by either party in enforcing or partially enforcing any provision of the Agreement will not be construed as a waiver of any of its rights or remedies under the Agreement.

15.3 Any waiver by either party of any breach of, or any default under, any provision of the Agreement by the other party will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Agreement.

15.4 Nothing in the Agreement shall create a partnership or a fiduciary relationship or the relationship of employment between the Supplier and the Customer.

15.5 Invalidity or unenforceability of one or more provisions of the Agreement shall not affect any other provision of the Agreement.

15.6 The parties to the Agreement do not intend that any term of the Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

15.7 The Agreement (and any dispute arising from it or related to its subject matter) shall be governed by, and construed, in accordance with the laws of Northern Ireland and the parties submit to the exclusive jurisdiction of the Northern Irish courts.

15.8 Any notice required or permitted to be given by either party to the other under the Agreement shall be in writing and sent by recorded post service and addressed to the other party at its registered office address, and the notice sent in this way shall be deemed to have been received by the receiving party at the time noted as the time of Delivery (or equivalent) by the postal carrier. The provisions of this Section shall not apply to the service of any proceedings or other documents in any legal action.

## 16 Escalation

16.1 Any question or difference which may arise concerning the construction, meaning or effect of the Agreement, or any matter arising out of or in connection with the Agreement shall in the first instance be referred to the representatives of the Supplier and the Customer nominated for this purpose for discussion and resolution as soon as reasonably possible and, in any event, within 21 days of such referral. If the unresolved matter is having a serious effect on the performance of the Agreement, the parties will use reasonable endeavours to reduce the elapsed time in completing the process. Neither party may initiate any legal action until the process has been completed, unless such party has reasonable cause to do so to avoid damage to its business or Intellectual Property Rights.

16.2 If the dispute is not resolved by escalation in accordance with Section 16.1, the parties may seek to resolve disputes between them by referring the dispute to leading counsel (the “Expert”) as may be appointed by agreement between the parties, failing such agreement, by the Chairman from time to time of the Northern Ireland Bar Association.

16.3 In giving such advice the Expert shall act as an expert and not as an arbitrator. The Expert's advice shall (in the absence of clerical or manifest error appearing within 14 days of its Delivery to the parties) be final and binding upon the parties and not subject to challenge in any way. The fees of the Expert shall be borne in accordance with the Expert's determination.

## ZIP CLIP SCHEDULE

### 1. Zip Clip Mark

1.1 The Supplier grants to the Customer a non-exclusive, non-transferable, non-assignable, revocable licence to use the Zip Clip Mark to promote and sell the Zip Clip Product in accordance with and subject to full compliance with this Agreement and, without limitation, this Schedule. In the event that the Customer is not offering the Zip Clip Products for sale to its end users, the licence to the Zip Clip Mark shall terminate unless otherwise agreed by the Supplier. The Supplier may from time to time, on written notice, limit the licence granted under this paragraph or the permission to sell or distribute the Zip Clip Products to the country in which the Zip Clip Products are to be delivered to the Customer in accordance with the Agreement.

1.2 The Customer shall:

1.2.1 use the Zip Clip Mark only in accordance with the Supplier's instructions and quality control standards (as it may notify to the Customer from time to time);

1.2.2 distribute and sell the Zip Clip Products (along with the packaging and instruction documentation provided along with the Zip Clip Products (**Accompanying Material**)) only under the Zip Clip Marks and not use on or in relation to the Zip Clip Products or Accompanying Material any other trade mark unless otherwise agreed by the Supplier that (subject to paragraph 2 of this Schedule) the Customer may affix the Customer Mark to the Zip Clip Product and/or the Accompanying Material;

1.2.3 do all such things and execute (at the Supplier's reasonable expense) such documentation as the Supplier may require in relation to the Customer's use of the Zip Clip Marks and the rights and protections as specified in the Agreement and this Schedule;

1.2.4 other than to affix the Customer Mark in accordance with paragraph 1.2.2 of this Schedule, not modify the Zip Clip Products or

# Smiley Monroe Limited (the “Supplier”) General Terms and Conditions of Sale

Accompanying Material or alter, deface or remove the Zip Clip Mark, notice or other information on the Zip Clip Products or Accompanying Material; and

distributors on the Customer's website or any other medium; and

(b) the Supplier may refer to the Customer, orally or in writing, as a customer of the Products and/or Services for promotional, marketing and financial reporting purposes.

1.2.5 at the Supplier's request and expense, assist the Supplier in maintaining the validity and enforceability of the Zip Clip Mark in the jurisdiction in which the Customer sells or distributes the Zip Clip Products.

1.3 The Customer shall ensure that any contract or arrangement it enters into with any third person which would entitle that person to sell, distribute or supply the Zip Clip Product to other customers or directly to end-users (including, without limitation, a reseller or distribution agreement) shall include restrictions equivalent to those set out in this Schedule regarding the restrictions on use, alteration, defacement or removal of any Zip Clip Mark or other marking made by the Supplier on the Zip Clip Product or Accompanying Material.

1.4 The Customer shall not, without the Supplier's prior written approval in each instance in accordance with paragraphs 1.5 and 1.6 of this Schedule, use any the Zip Clip Mark in advertising, publicity, marketing or other promotional materials or activities.

1.5 The Customer shall submit to the Supplier in advance for its approval:  
(a) any marketing materials, and  
(b) a mock-up of any web pages or social media posts, which refer to the Supplier, the Zip Clip Mark or the Zip Clip Product.

1.6 All promotional literature, advertising material and other materials prepared by the Customer in connection with promotion of the Zip Clip Product shall bear appropriate copyright and trade mark notices as prescribed by the Supplier.

1.7 The Customer shall not use, register or attempt to register in any jurisdiction, or otherwise appropriate or adopt, any name, mark or logo that is confusingly similar to the Zip Clip Mark or will dilute the distinctive nature of the Zip Clip Mark.

1.8 At no time during shall the Customer attack, challenge or file any application with respect to any Zip Clip Mark.

1.9 The Supplier reserves the right to charge the Customer a royalty on all sales of Zip Clip Products sold by the Customer to end-users or other recipients (at a rate as a proportion of the gross price of the Zip Clip Product charged by the Customer to such end-user or recipient to be notified by the Supplier) by providing the Customer with not less than 6 months' notice (**Royalty Notice Period**). The Customer shall be entitled to object in writing to such royalty being charged at any time during the Royalty Notice Period, in which case the permission granted under this Schedule to affix the Customer Mark to Zip Clip Products shall automatically terminate on expiry of the Royalty Notice Period. If no such objection is received from the Customer during the Royalty Notice Period: the royalty rate specified in accordance with this paragraph shall be chargeable on all sales of Zip Clip Products by the Customer from the date of expiry of the Royalty Notice Period; the Customer shall provide the Supplier with monthly statements specifying the number and price of Zip Clip Products sold within that period, which the Supplier shall use to produce an invoice for payment in pounds sterling (or, using the currency exchange rate published by the Bank of England as of the date of the statement provided under this paragraph, its then-equivalent amount of US dollars) of all royalties owed, payable by the Customer within 30 days; and the Customer shall provide the Supplier (or its appointed representative) access to all records, personnel and information as reasonably necessary to verify the number and price of Zip Clip Products sold by the Customer.

## 2. Customer Mark

2.1 The Customer (or its licensors) shall own all Intellectual Property Rights in and to the Customer Mark and shall have sole responsibility for the legality and permission for use of the Customer Mark.

2.2 The Customer shall indemnify and hold harmless the Supplier against any loss, claim, liability or expense that arises or it incurs as a result of any claim that the Customer Mark or the Supplier's use of the Customer Mark in accordance with this Agreement, or the use by the Customer of any other mark or words in the use or sale of any Product, infringes any third party's Intellectual Property Rights.

2.3 The Customer acknowledges and agrees that:  
(a) the Supplier may include the Customer's name and the Customer Mark in a list of the Supplier's customers or