

## Spiroflow Limited Terms and Conditions of Contract

The customer's attention is drawn in particular to the provisions of Clause 10.

### 1. INTERPRETATION

#### 1.1 Definitions:-

<b>Acknowledgment of Order:</b>	written acknowledgment of the Order, issued by Spiroflow to the Customer under the terms of this Contract.
<b>Business Day:</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>Conditions:</b>	terms and conditions set out in this document as amended from time to time in accordance with clause 15.3.
<b>Contract:</b>	contract between Spiroflow and the Customer for the sale and purchase of the Goods and Services (if any) in accordance with these Conditions.
<b>Customer:</b>	person or firm who purchases the Goods and/or Services from Spiroflow.
<b>Delivery Location:</b>	the delivery location or address specified in the Acknowledgment of Order
<b>Force Majeure Event:</b>	has the meaning given in clause 12.
<b>Goods:</b>	goods (or any part of them) agreed to be sold as described in the Acknowledgment of Order and/or Specification.
<b>Incoterms:</b>	Incoterms® 2020 or any subsequent version of such terms.
<b>Intellectual Property Rights:</b>	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.
<b>Order:</b>	Customer's order for the Goods and/or Services, as set out in the Customer's purchase order form, written acceptance of Spiroflow's quotation or other similar document.
<b>Pandemic Event:</b>	an event described in clause 12.4.
<b>Parties:</b>	Spiroflow and the Customer (each a <b>Party</b> ).
<b>Price:</b>	price of the Goods and/or Services as set out in clause 7.
<b>Services:</b>	services (if any) which Spiroflow has agreed to provide as described in the Acknowledgment of Order and/or Specification.

<b>Special Conditions:</b>	any conditions that are agreed between the Parties hereto and evidenced in writing in the Acknowledgment of Order.
<b>Specification:</b>	specification for the Goods and/or Services, including any related plans and drawings that is agreed in writing by the Customer and Spiroflow and appended to the quotation issued by Spiroflow and/or the Acknowledgment of Order
<b>Spiroflow:</b>	Spiroflow Limited (registered in England and Wales with company number 1210198).

## 1.2 Interpretation

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- (b) A reference to a Party includes its successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) 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.
- (e) A reference to **writing** or **written** includes fax and email.

## 2. BASIS OF CONTRACT

- 2.1 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 law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when Spiroflow issues an Acknowledgment of Order, at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions and the Special Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by Spiroflow and/or contained in any document other than the Acknowledgement of Order or Specification, and any descriptions or illustrations contained in Spiroflow's catalogues or brochures or on its website, are produced for the sole purpose of giving an approximate idea of the Goods or Services referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Goods or Services given by Spiroflow shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue provided that Spiroflow may increase the price of the quotation at any time due to any increase in the price of raw materials, equipment, labour costs or for any other reason.
- 2.7 If there is any conflict between any terms of this Contract then, to the extent necessary to resolve the conflict, the parts of the Contract shall prevail and take priority in the following order:

- (a) the Acknowledgment of Order;
- (b) the Specification (if any); and
- (c) these Conditions.

### **3. SPECIFICATION**

3.1 The Customer shall indemnify Spiroflow 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 and other reasonable professional costs and expenses) suffered or incurred by Spiroflow in connection with any claim made against Spiroflow for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with:

- (a) Spiroflow's use of any specification provided by the Customer; or
- (b) any instructions provided by the Customer to Spiroflow.

This clause 3.1 shall survive termination of the Contract.

3.2 Spiroflow reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, or if the amendment will not materially adversely affect the nature or quality of the Goods or Services, and Spiroflow shall notify the Customer in any such event.

### **4. DELIVERY**

4.1 Spiroflow shall ensure that:

- (a) if Spiroflow requires the Customer to return any packaging materials to Spiroflow, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Spiroflow shall reasonably request. Returns of packaging materials shall be at Spiroflow's expense;
- (b) unless otherwise specified in the Acknowledgment of Order, Spiroflow shall deliver the Goods EXW Incoterms Delivery Location at any time after Spiroflow notifies the Customer that the Goods are ready.

4.2 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Spiroflow shall not be liable for any failure or delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Spiroflow with adequate delivery instructions or any other instructions or information that are relevant to the supply of the Goods or Services including (but not limited to) delay of technical information by the Customer, drawing sign off, or change of Specification or scope of supply.

4.3 If the Customer fails to accept delivery of the Goods on the date specified by Spiroflow for delivery, then, except where such failure or delay is caused by a Force Majeure Event or Spiroflow's failure to comply with its obligations under the Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed at 1600 hrs on the fifth Business Day after the day on which Spiroflow notified the Customer that the Goods were ready; and
- (b) Spiroflow shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance). Spiroflow will release the Goods to the Customer only once all such charges are paid.

4.4 If 20 Business Days after the day on which Spiroflow notified the Customer that the Goods were ready for delivery the Customer has not taken actual delivery of them, Spiroflow 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.

- 4.5 Spiroflow 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.

## **5. QUALITY**

- 5.1 Spiroflow warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:

- (a) conform in all material respects with the Specification; and
- (b) be free from material defects in design, material and workmanship.

- 5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to Spiroflow during the warranty period within 3 Business Days of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) Spiroflow is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by Spiroflow) returns such Goods to Spiroflow place of business at the Customer's cost, then

Spiroflow shall, at its option, repair or replace the defective Goods.

- 5.3 Spiroflow shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2(a);
- (b) the defect arises because the Customer failed to follow Spiroflow's or the relevant manufacturer's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of Spiroflow following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of Spiroflow, or permits or instructs any third party to do the same;
- (e) the defect arises as a result of the Goods being operated outside of their intended use, including for processing any material or product which has not been agreed or approved by Spiroflow as being suitable for processing by the Goods;
- (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

the Goods differ from the Specification as a result of changes made pursuant to Clause 3.2.

- 5.4 The Supplier shall supply the Services to the Customer using reasonable care and skill and in accordance with the Specification in all material respects.

- 5.5 Except as provided in this clause 5, Spiroflow shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1 or any other defect in the Goods or Services.

- 5.6 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.
- 5.7 Any repaired or replacement components in the Goods supplied by Spiroflow will benefit from a renewed warranty period as detailed at clause 5.1 (and so will benefit from the warranty 12 months from the date of delivery of the component). The remainder of the Goods will be subject to the original warranty period.

## **6. TITLE AND RISK**

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Subject to clause 6.3, title to the Goods shall not pass to the Customer until Spiroflow receives payment in full (in cash or cleared funds) for the Goods and Services and any other goods and services that Spiroflow has supplied or agreed to supply to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums.
- 6.3 The Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Spiroflow receives payment for the Goods. However, if the Customer resells the Goods before that time
- (a) it does so as principal and not as Spiroflow's agent; and
  - (b) title to the Goods shall pass from the Spiroflow to the Customer immediately before the time at which resale by the Customer occurs.
- 6.4 Until title to the Goods has passed to the Customer:
- (a) the Customer shall:
    - (i) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Spiroflow's property;
    - (ii) not remove, deface, or obscure any identifying mark or packaging on or relating to the Goods;
    - (iii) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
    - (iv) notify Spiroflow immediately if it commits or becomes subject to any of the events listed in clause 11.1(a) to clause 11.1(e); and
    - (v) give Spiroflow such information as Spiroflow may reasonably require from time to time relating to:
      - (A) the Goods; and
      - (B) the ongoing financial position of the Customer,
  - (b) Spiroflow shall have the right to:
    - (i) by notice in writing, terminate the Customer's right to resell the Goods or use the Goods in the ordinary course of its business; and
    - (ii) require the Customer to deliver up all Goods in its possession that have not been resold or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7. PRICE AND PAYMENT**

- 7.1 The Price shall be the price set out in the Acknowledgment of Order. Such Price shall be fixed subject to Clause 7.2.
- 7.2 Spiroflow may, by giving notice to the Customer at any time before delivery, increase the Price to reflect any increase in the cost of the Goods and/or Services that is due to:
- (a) any request by the Customer to change the delivery date(s), quantities or types of Goods or Services ordered, or the Specification;
  - (b) any delay caused by any instructions of the Customer or failure of the Customer to give Spiroflow adequate or accurate information or instructions relating to Spiroflow's performance of the Contract;
  - (c) interruptions, delays, increases in taxes and duties, increases in labour, materials and other manufacturing or supply costs, or foreign exchange fluctuations; or
  - (d) any Force Majeure Event.
- 7.3 The price of the Goods:
- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to Spiroflow at the prevailing rate, subject to the receipt of a valid VAT invoice; and
  - (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer (unless otherwise agreed in the Acknowledgment of Order).
- 7.4 Subject to any alternative conditions agreed in writing between the Parties, Spiroflow may invoice the Customer for the Goods and Services on or at any time before, on or after the completion of delivery.
- 7.5 Subject to any alternative agreement in writing between the Parties, the Customer shall pay each invoice submitted by Spiroflow:
- (a) within 30 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by Spiroflow, and
  - (c) time for payment shall be of the essence of the Contract.
- 7.6 If the Customer fails to make a payment due to Spiroflow under the Contract by the due date, then, without limiting Spiroflow's remedies at law or under the Contract, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.7 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).
- 7.8 Unless agreed otherwise in writing between the parties, the Customer shall bear and indemnify Spiroflow against all travel and subsistence costs incurred by Spiroflow's employees and agents in providing any erection installation, start-up, testing, maintenance, and other services, where such services are provided otherwise than at Spiroflow's premises.

## **8. CUSTOMER OBLIGATIONS**

- 8.1 The Customer shall:

- (a) co-operate with Spiroflow in all matters relating to the Contract;
- (b) provide Spiroflow with such information as Spiroflow may reasonably require in order to perform the Contract, and ensure that such information is complete and accurate in all material respects;
- (c) prepare the relevant site for the delivery of Goods and the supply of the Services and provide suitable access to and unhindered possession of the site at which any installation services are to be carried out by Spiroflow (**Site**), including a clear and safe working area and suitable supply or utilities;
- (d) be responsible for general safety precautions at the Site;
- (e) ensure that any plant or equipment provided by the Customer for use in connection with the performance of the Contract is adequate, in good working order, safe for use and in compliance with all applicable laws;
- (f) comply with applicable laws and regulations (including health and safety laws) and any other mandatory requirements relating to the Customer and/or its business, personnel or premises;
- (g) be solely responsible for ensuring that any equipment and/or structures in conjunction with which the Goods and which are not supplied by Spiroflow are in all respects suitable and adequate for the relevant purpose, and are properly installed;
- (h) obtain and maintain all licences, permissions and consents which may be required for the performance of the Contract, including any necessary import licences;
- (i) keep all materials, equipment, plant, tooling, documents and other property of Spiroflow or its contractors (**Spiroflow Materials**) at the Customer's premises in safe custody at its own risk, maintain the Spiroflow Materials in good condition until returned to Spiroflow, and not dispose of or use Spiroflow Materials other than in accordance with Spiroflow's written instructions;
- (j) comply with the Special Conditions and any additional obligations set out in the Acknowledgment of Order or Specification;
- (k) at its own expense provide any layout and other drawings and information as Spiroflow may require and such power, compressed air, water and other facilities as Spiroflow may require and charges and costs in connection with such provision shall be borne by the Customer; and
- (l) inspect the Goods for defects or shortfall promptly upon delivery and in accordance with best industry practice.

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

- (a) without limiting or affecting any other right or remedy available to it, Spiroflow shall have the right to suspend its performance of the Contract 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 Spiroflow's performance of its obligations;
- (b) Spiroflow shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Spiroflow's failure or delay to perform any of its obligations; and
- (c) the Customer shall reimburse Spiroflow on written demand for any costs or losses sustained or incurred by Spiroflow arising directly or indirectly from the Customer Default.

## **9. INDEMNITY**

- 9.1 The Customer shall indemnify Spiroflow 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 Spiroflow howsoever arising out of or in connection with:
- (a) any claim made against Spiroflow by a third party for death, personal injury, damage to property or otherwise arising as result of any act or omission of the Customer or its personnel, agents, subcontractors or consultants;
  - (b) any damage to Spiroflow's property caused by an act or omission of the Customer or its personnel, agents, subcontractors or consultants;
  - (c) any defects in or unsuitability of works, equipment, apparatus or plant at the Customer's premises, other than works carried out or equipment provided by Spiroflow;
  - (d) any breach of the Contract by the Customer or its personnel, agents, subcontractors or consultants, or any act, omission, negligence or wilful misconduct on the part of the Customer or its personnel, agents, subcontractors or consultants; and
  - (e) the enforcement of this Contract or any part of it by Spiroflow, including any legal costs arising in connection with a claim made by Spiroflow for breach of the Contract.
- 9.2 This clause 9 shall survive termination of the Contract.

## **10. LIMITATION OF LIABILITY AND INSURANCE**

- 10.1 Spiroflow has Product Liability and Third-Party Liability Insurance cover but is not able to obtain insurance against all losses that may arise under this Contract at a viable price. Spiroflow will on written request by the Customer give to the Customer details of its insurance policies.
- 10.2 The restrictions on liability in this clause apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 10.3 Nothing in the Contract limits or excludes any liability which cannot legally be limited or excluded, including liability for:
- (a) death or personal injury caused by its negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
  - (d) defective products under the Consumer Protection Act 1987; or
  - (e) any other matter in respect of which it would be unlawful for Spiroflow to exclude or restrict liability.
- 10.4 Subject to clause 10.3, Spiroflow's total liability to the Customer shall not exceed an amount equal to the aggregate Price paid to Spiroflow by the Customer during the 6 month period prior to the date on which the event giving rise to the liability first occurred.
- 10.5 Subject to clause 10.3, Spiroflow shall not be liable to the Customer for any of the following types of loss:
- (a) loss of profits;
  - (b) loss of sales or business;



- (c) loss of agreements or contracts;
- (d) loss of use or production;
- (e) loss of anticipated savings;
- (f) loss of use or corruption of software, data or information;
- (g) loss of or damage to goodwill; and
- (h) indirect or consequential loss.

10.6 Spiroflow shall not be liable to the Customer for any loss, damages, costs or expenses that arise as a result of any act or omission of the Customer.

10.7 This clause 10 shall survive termination of the Contract.

## **11. TERMINATION**

11.1 Without limiting its other rights or remedies, Spiroflow may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
- (b) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 days of the Customer being notified in writing to do so;
- (c) 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), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (d) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (e) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

11.2 Without limiting its other rights or remedies, Spiroflow may suspend provision of the Goods and/or Services under the Contract or any other contract between the Customer and Spiroflow if the Customer carries out any of the actions or becomes subject to any of the events listed in clause 11.1(a) to clause 11.1(e), or Spiroflow reasonably believes that the Customer is about to commit or become subject to any of them.

11.3 On termination of the Contract for any reason the Customer shall immediately:

- (a) pay to Spiroflow all of Spiroflow's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, Spiroflow shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
- (b) return any Spiroflow Materials (as defined in clause 8.1(i)) and any Goods which have not been fully paid for. If the Customer fails to do so, then Spiroflow 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 without Spiroflow's prior written consent.

- 11.4 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at 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.
- 11.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 12. FORCE MAJEURE

- 12.1 Save in respect of the Customer's obligation to pay the Price, 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 is occasioned by any cause whatsoever that is beyond either party's reasonable control, including but not limited to an Act of God or natural disaster, war, civil disturbance, requisition, government or parliamentary restrictions, prohibitions or enactment of any kind import or export regulations, strikes, lockouts or trade dispute, breakdown of machinery, fire or accident, non-performance by suppliers or subcontractors, interruption or failure of utility service or a Pandemic Event (**Force Majeure Event**).
- 12.2 Should any Force Majeure Event occur then the affected Party shall not 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 results from the Force Majeure Event, provided that it gives written notice to the other party within 10 days of the commencement of such Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.
- 12.3 If the period of delay or non-performance continues for 3 months, the Party not affected may terminate the Contract by giving 20 days' written notice to the affected Party.
- 12.4 For the purpose of the above clause, 'Pandemic Event' means any of the following events if caused by a pandemic or epidemic (including but not limited to Covid-19 or any variety of SARS):
- (a) **Change in Law:** a change in the Law or a new requirement to comply with any existing Law or existing Law ceasing to apply to a party. For these purposes, Law means any legal provision a party must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, enforceable EU right within the meaning of section 2 of the European Communities Act 1972, byelaw, regulation, order, mandatory guidance or code of practice, judgment of a court of law, or requirement of any regulatory body, whether in the UK or elsewhere;
  - (b) **Licence or consent:** in any jurisdiction, the loss of, a change to or the imposition of a new requirement for any licence or consent required by the customer to purchase or use the Goods and/or Services;
  - (c) **Border Closures and Import / Export Restrictions:** any restriction on the movement of Goods or provision of Services and/or movement of people in and out of the United Kingdom to and from third countries;
  - (d) **Restrictions on Movement:** any restriction on the free movement of people within a geographical territory, including but not to, quarantine, self-isolation or compulsory isolation.

## 13. CONFIDENTIALITY

- 13.1 Each Party undertakes that it shall not at any time during the Contract and for a period of 2 years after expiry 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 13.2

13.2 Each Party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under the Contract. Each Party shall ensure that any persons to whom it discloses the other Party's confidential information comply with Clause 13.1; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## **14. INTELLECTUAL PROPERTY**

14.1 All Intellectual Property Rights in the Goods and any deliverables, and in or arising out of or in connection with the Services, including in all drawings, patterns, data, literature photographs, illustrations, specifications, performance data, dimensions, weights, manufacturing and operating techniques, and similar materials or information created or developed by or on behalf of Spiroflow or jointly by the parties in connection with the Contract (**Information**), shall be the property of Spiroflow. The Customer hereby assigns (by way of present and future assignment) all such Intellectual Property Rights to Spiroflow.

14.2 Except as otherwise expressly agreed in writing, the Information shall be confidential to Spiroflow and shall not be disclosed or used by the Customer except where the Customer has paid all sums due to Spiroflow under the Contract and (subject to and following such payment) only as necessary for the purpose of application and use by the Customer of the Goods in relation to which they were supplied.

14.3 The Customer shall not alter or deface any of Spiroflow's registered trademarks as marked on the Goods when the Goods are so marked, or apply to them such other trademark or written matter which is likely to adversely affect the reputation of Spiroflow or its trademark.

14.4 Spiroflow shall indemnify the Customer against damage and costs awarded as a consequence of the Goods themselves and the delivery or importation thereof infringing its option any patent rights published (at the date of the Contract) in the United Kingdom provided always that:

- (a) this indemnity shall not apply to any infringement which is due to Spiroflow having followed an instruction, furnished or given by the Customer, or to the use of such material, in a manner or for a purpose, or in a foreign country not specified or disclosed to Spiroflow, or in combination with any other materials or process.
- (b) this indemnity is conditional on the Customer giving to Spiroflow the earliest possible notice in writing of any claim being made or action threatened against the Customer, and on the Customer permitting Spiroflow, at the latter's expense, to conduct any litigation that may ensue and all negotiations for a settlement of the claim.

14.5 There is no licence granted to the Customer, (implied or express) to manufacture, produce or sell or otherwise use the Goods in a manner, which may infringe any Intellectual Property Rights, owned by Spiroflow or any third party.

## **15. GENERAL**

### **15.1 Assignment and other dealings.**

- (a) Spiroflow may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Spiroflow.

### **15.2 Entire agreement.**

- (a) 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.
- (b) Each party agrees that it 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 misstatement based on any statement in the Contract.

### **15.3 Variation.**

Subject to clause 3.2, no variation of this Contract shall be effective unless it is confirmed in writing by the parties (or their authorised representatives) or confirmed by email.

### **15.4 Waiver.**

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **15.5 Severance.**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 15.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **15.6 Notices.**

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

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the primary email address of the party (being the email address used generally for correspondence between the parties in relation to the Contract); or
- (c) sent by airmail.

15.8 Any notice shall be deemed to have been received

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

- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9:00 am on the 2 Business Day after posting or (if applicable) at the time recorded by the delivery service; and
- (c) if sent by airmail, at 9.00 am on the fifth Business Day after posting or (if applicable) at the time recorded by the delivery service;
- (d) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 15.8(c), business hours mean 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

15.9 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

#### 15.10 **Third Party**

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.

#### 15.11 **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.

#### 15.12 **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.

### 16. **DISPUTES AND CLAIMS**

16.1 The Parties will attempt in good faith to resolve any dispute or claims arising out of or relating to this Contract promptly.

16.2 If the matter is not resolved through negotiation, the Parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution (ADR) procedure as recommended to the parties by the Centre for Dispute Resolution (CEDR).

16.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure, or if either Party will not participate in an ADR procedure, the dispute shall be referred to the English Courts under clause 15.12, subject to the rights of either Party to enforce a judgement obtained in the English Courts in any other jurisdiction.