

STANDARD TERMS AND CONDITIONS

These are the Swann Engineering Group Limited standard terms and conditions (**Conditions**) referenced in the letter to which it is attached (**Engagement Letter**). The Engagement Letter and these Conditions form the Contract between Swann Engineering Group Limited (**Supplier**) and the entity named in the Engagement Letter (**Customer**). If there is any conflict or ambiguity between the terms of the Engagement Letter and these Conditions, the Engagement Letter shall prevail.

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1. INTERPRETATION

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England.

Charges: the charges payable by the Customer as set out in the Engagement Letter.

Contract: the contract between the Customer and the Supplier for the supply of the Goods and/or Services in accordance with the Engagement Letter and these Conditions.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

Customer Materials: all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier.

Deliverables: all documents, products and materials developed by the Supplier as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications.

Delivery Location: the location for delivery provided for in the Engagement Letter or subsequently agreed between the parties in writing.

Goods: any physical goods provided for in the Engagement Letter.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Services: the services, including any Deliverables, to be provided by the Supplier pursuant to this Contract, as described in the Engagement Letter.

Supplier IPRs: all Intellectual Property Rights either subsisting in the Deliverables (excluding any Customer Materials incorporated in them) or otherwise necessary or desirable to enable a Customer to receive and use the Services.

1.2 Interpretation:

- (a) 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 any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

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- (c) A reference to **writing** or **written** includes e-mail.

2. COMMENCEMENT AND TERM

This Contract shall commence on the date referenced in the Engagement Letter and shall continue, unless terminated earlier in accordance with its terms, until completion of the Services or delivery of the Goods.

3. SUPPLY OF SERVICES

3.1 The Supplier shall supply the Services to the Customer in accordance with this Contract.

3.2 In supplying the Services, the Supplier shall:

- (a) perform the Services with reasonable care and skill, and in accordance with applicable laws;
- (b) use reasonable endeavours to perform the Services in accordance with any service description set out in the Engagement Letter;
- (c) ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of satisfactory quality at the date of delivery;
- (d) observe all reasonable health and safety rules and security requirements that apply at any of the Customer's premises and have been communicated to the Supplier, provided that the Supplier shall not be liable if, as a result of such observation, it is in breach of any of its obligations under this Contract; and
- (e) take reasonable care of all Customer Materials in its possession and make them available for collection by the Customer on reasonable notice and request, always provided that the Supplier may destroy the Customer Materials if the Customer fails to collect the Customer Materials within a reasonable period after termination or expiry of this Contract.

4. SUPPLY OF GOODS

4.1 The Supplier shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note which shows the type and quantity of the Goods, any special storage instructions and, if the order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request.

4.2 The Supplier shall deliver the Goods to the Delivery Location at any time after the Supplier notifies the Customer that the Goods are ready. If the Customer fails to take delivery of the Goods the Supplier shall store the Goods until delivery subsequently takes place, and charge the Customer for all related costs and expenses (including insurance). If subsequent delivery does not take place within fifteen Business Days after the Goods were first tendered for delivery, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. The Customer shall be responsible for unloading the Goods from the relevant means of transportation.

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

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- 4.5 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5% per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the relevant invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.6 The Supplier 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 The Supplier warrants that on delivery the Goods shall:
- (a) conform in all material respects with their description;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 4.8 Subject to clause 4.9, if:
- (a) the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.7;
 - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 4.9 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 4.7 if:
- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 4.8;
 - (b) the defect arises because the Customer failed to follow the Supplier'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;
 - (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
 - (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 4.10 The risk in the Goods shall pass to the Customer on completion of delivery.
- 4.11 Title to the Goods shall not pass to the Customer until the earlier of:
- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods in respect of which payment has become due; and
 - (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 4.13.
- 4.12 Until title to the Goods has passed to the Customer, the Customer shall:

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- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1(b); and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

4.13 Subject to clause 4.14, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

4.14 If before title to the Goods passes to the Customer it becomes subject to any of the events listed in clause 9.1(b), then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at any time require the Customer to deliver up all Goods in its possession which 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.

5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as required by the Supplier, and such information as the Supplier may require, and ensure that it is accurate in all material respects.

5.2 If the Supplier's performance of its obligations under this Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall:

- (a) not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
- (b) be entitled to payment of Charges falling due despite any such prevention or delay; and
- (c) be entitled to recover any additional costs, charges or losses the Supplier sustains or incurs that arise from such prevention or delay.

6. INTELLECTUAL PROPERTY

6.1 The Supplier shall retain ownership of all Supplier IPRs. The Customer shall retain ownership of all Intellectual Property Rights in the Customer Materials.

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6.2 The Supplier grants the Customer a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy the Supplier IPRs for the purpose of receiving and using the Services and the Deliverables in the Customer's business during the term of this Contract.

6.3 The Customer grants the Supplier a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this Contract for the purpose of providing the Services to the Customer.

7. CHARGES AND PAYMENT

7.1 In consideration for the provision of the Services, the Customer shall pay the Supplier the Charges in accordance with this clause 7.

7.2 All Charges are stated exclusive of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to receipt of a valid VAT invoice.

7.3 The Supplier shall submit invoices for the Charges plus VAT (if applicable) to the Customer at the times specified in the Engagement Letter.

7.4 The Customer shall pay each invoice due and submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier.

7.5 If the Customer fails to make any payment due to the Supplier under this Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 9, the Customer shall pay interest on the overdue sum at the rate of 8% per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue sum.

7.6 All Charges shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than as required by law).

7.7 Where the Customer requires a process of goods receipting (also known as approval to invoice) they shall receipt the Goods and/or Services within 5 Business Days of delivery. This process will not affect the invoice date nor the payment due date.

8. LIMITATION OF LIABILITY

8.1 Nothing in this Contract shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 or section 12 of the Sale of Goods Act 1979 or any other liability which cannot be limited or excluded by applicable law.

8.2 Subject to clause 8.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;

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- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) any indirect or consequential loss.

8.3 Subject to clause 8.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Contract shall be limited to a sum equivalent to 100% of the Charges.

8.4 All warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Contract.

9. TERMINATION

9.1 Without affecting any other right or remedy available to it, either party to this Contract may terminate it with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this Contract, including in relation to any payment obligation, which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) the other party suffers or 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;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

9.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if there is a change of Control of the Customer.

9.3 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under this Contract if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 9.1(b), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

9.4 On termination of this Contract for whatever reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination; and
- (c) any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

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10. GENERAL

- 10.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 10.2 The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Contract without the Supplier's prior written consent. The Supplier may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under this Contract.
- 10.3 Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 10.4. For the purposes of this clause, "group" means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under this Contract.
- 10.4 Each party may disclose the other party's confidential information:
- (a) 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 this 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 10.4; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.5 This 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. 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 this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 10.6 No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 10.7 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, or prevent or restrict the further exercise of that or any other right or remedy.
- 10.8 If any provision or part-provision of this 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 shall not affect the validity and enforceability of the rest of this Contract.
- 10.9 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or e-mail. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the relevant address; if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.
- 10.10 No one other than a party to this Contract shall have any right to enforce any of its terms.

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- 10.11 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 10.12 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).