

Citizen Machinery UK Ltd – Terms and Conditions for the Supply of Goods and Ancillary Services (V1.0 01/09/2018)

The Customer's attention is drawn in particular to the provisions of condition 11.

1. Definitions and interpretation

1.1 In these Conditions, the following definitions apply:

"Business Day" a day other than a Saturday, Sunday or public holiday in England;

"Charges" the charges payable by the Customer for the supply of the Services in accordance with condition 9.2;

"Citizen" Citizen Machinery UK Ltd (registered in England and Wales with company number 01174902) and registered address at 1 Park Avenue, Bushey WD23 2DA;

"Citizen Materials" all materials, equipment and tools, drawings, specifications and data supplied or made available by Citizen to the Customer;

"Citizen Personnel" the personnel including subcontractors engaged by Citizen in the performance of the Contract (but for the avoidance of doubt excluding any independent distributor of the Equipment or any personnel of such distributor);

"Commencement Date" has the meaning given in condition 2.3;

"Conditions" the terms and conditions set out in this document as amended from time to time in accordance with condition 16.3;

"Confidential Information" any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise, relating to the business, affairs, customers, suppliers, employees, affiliates, products and/or methods of Citizen or the Customer and disclosed to or otherwise obtained by the other party in connection with the Contract;

"Components" the spare or replacement parts, if any, set out in the Order;

"Confirmation" any form of confirmation provided by Citizen to the Customer to indicate Citizen's acceptance of the Customer's Order;

"Contract" the contract between Citizen and the Customer for the supply of the Goods and/or Services which incorporates these Conditions, the Order, the Confirmation, the Goods Specification and the Service Specification (where applicable);

"Customer" the person or firm who purchases Goods and/or Services from Citizen;

"Data Protection Legislation" the Data Protection Act 2018, together with, unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK, and any successor legislation to the GDPR or the Data Protection Act 2018;

"Deliverables" all documents, products and materials developed by Citizen or Citizen Personnel as part of or in relation to the Services in any form or media, including drawings,

maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

"Delivery Location" the address specified in the relevant Order or, where no such address is specified, Citizen's showroom at 1 Park Avenue, Bushey WD23 2DA;

"Equipment" the equipment, if any, set out in the Order;

"Force Majeure Event" has the meaning given in condition 15;

"Goods" the Equipment and/or Components (or any part of them);

"Goods Specification" the specification for the Goods (if any) that is attached to or identified in the Order, or otherwise agreed in writing between the parties;

"Insolvency Event" has the meaning given in conditions 14.2.2 and 14.2.3;

"Intellectual Property Rights" patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Order" the Customer's order for the supply of the Goods and/or Services, as set out (i) in the Customer's purchase order form, or (ii) in a quotation or proposal provided by Citizen if the Customer subsequently instructs Citizen to proceed with the delivery of Goods or performance of Services on the basis of such quotation or proposal, or (iii) overleaf, as the case may be;

"Price" the price payable by the Customer for the supply of the Goods in accordance with condition 9.1;

"Services" the services, including any Deliverables, to be provided by Citizen under the Contract in accordance with the Service Specification; and

"Service Specification" the specification for the Services (if any) that is attached to or identified in the Order, or otherwise agreed in writing between the parties;

"Warranty Conditions" in respect of any Equipment or any Component, the conditions subject to which Citizen's warranty at condition 5.1 is given in respect of that Equipment or Component, being those stated in these Conditions together with any more detailed warranty conditions attached to or identified in the Order or otherwise agreed between the parties; and

"Warranty" in respect of any Equipment or any Component, the period during which

<p>Period"</p> <p>Citizen's warranty at condition 5.1 is given in respect of that Equipment or Component, being: (i) two years commencing on the date of delivery in respect of Equipment supplied as new; (ii) three months, or as otherwise stipulated in the Order or Confirmation, commencing on the date of delivery in respect of all Components or any Equipment supplied as used; (iii) as specified at condition 5.5 in respect of Components fitted to Equipment repaired under warranty; or as otherwise specified in the Order or otherwise agreed between the parties.</p>	<p>3.</p> <p>3.1</p> <p>3.2</p>	<p>Goods</p> <p>The Goods are described in the Goods Specification set out or identified in the Order.</p> <p>Citizen reserves the right to amend the specification of the Goods and any applicable Goods Specification if required by any applicable statutory or regulatory requirements.</p>
<p>1.2 In these Conditions, the following rules apply:</p> <p>1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended, re-enacted or superseded and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;</p> <p>1.2.2 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; and</p> <p>1.2.3 a reference to "writing" or "written" includes emails.</p>	<p>4.</p> <p>4.1</p> <p>4.2</p> <p>4.2.1</p> <p>4.2.2</p>	<p>Delivery of the Goods</p> <p>Citizen shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.</p> <p>Save where specified to the contrary in the Order or, if the Order does not specify a Delivery Location, in the Confirmation:</p> <p>the Customer shall collect the Goods from Citizen's premises at the Delivery Location, or such other location as may be advised by Citizen prior to delivery, within three Business Days of Citizen notifying the Customer that the Goods are ready; and</p> <p>delivery of the Goods in such case shall take place on the completion of loading of the Goods at the Delivery Location, or such other location as may be advised by Citizen prior to delivery.</p>
<p>2. Basis of contract</p> <p>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 trade, custom, practice or course of dealing.</p> <p>2.2 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Goods Specification and/or Service Specification submitted by the Customer are complete and accurate.</p> <p>2.3 The Order shall only be deemed to be accepted when Citizen provides Confirmation of the Order, or takes any step required for the performance of the Contract following receipt of the Order from the Customer, at which point the Contract shall come into existence ("Commencement Date"). Once the Contract comes into existence, the Customer shall not cancel or vary the Order without Citizen's express written consent. Citizen reserves the right to charge the Customer reasonable cancellation charges and/or a restocking fee of 10%, or to retain any deposit paid in accordance with the Order, in the event of any such cancellation.</p> <p>2.4 Any samples, drawings, descriptive matter, or advertising produced by Citizen and any descriptions or illustrations contained in Citizen's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.</p> <p>2.5 Any quotation given by Citizen shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.</p> <p>2.6 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any document that is inconsistent with these Conditions.</p>	<p>4.3</p> <p>4.3.1</p> <p>4.3.2</p> <p>4.3.3</p> <p>4.4</p> <p>4.5</p>	<p>Where specified in the Order that Citizen shall undertake delivery of the Goods:</p> <p>Citizen shall deliver the Goods to the Delivery Location set out in the Order, or such other location as the parties may agree, at any time after Citizen notifies the Customer that the Goods are ready;</p> <p>the Customer shall provide all necessary delivery instructions, permissions and access to enable the Goods to be safely unloaded at the Delivery Location set out in the Order, or such other location as the parties may agree, and shall ensure that each delivery of Goods is signed for by an authorised representative; and</p> <p>delivery of the Goods in such case shall be completed on the Goods' arrival at the Delivery Location set out in the Order, or such other location as the parties may agree.</p> <p>Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Citizen shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Citizen with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.</p> <p>In the event that Citizen, after accepting the Customer's Order in accordance with condition 2.3, elects to cancel the Contract, Citizen's liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Citizen shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Citizen with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.</p>

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- 4.6 If, when Citizen has attempted to deliver the Goods to the Delivery Location between the hours of 9am and 5pm on any Business Day, or otherwise at any time agreed between the parties, the Customer fails to take delivery of the Goods at such time, or if, in the case of Goods to be delivered at Citizen's premises, the Customer fails to take delivery of the Goods within three Business Days of Citizen notifying the Customer that the Goods are ready for collection, or in any case if Citizen is unable to deliver the Goods due to the Customer's breach of condition 4.3, then, except where such failure or inability is caused by a Force Majeure Event or Citizen's failure to comply with its obligations under the Contract:
- 4.6.1 delivery of the Goods shall be deemed to have been completed at 09:00 on the third Business Day after the day on which Citizen notified the Customer that the Goods were ready for collection or delivery (as applicable); and
- 4.6.2 Citizen shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 10 Business Days after the day on which Citizen notified the Customer that the Goods were ready for delivery the Customer has not taken or, as applicable, accepted delivery of them, Citizen 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.
- 4.8 Citizen 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 of the Goods**
- 5.1 Citizen warrants, subject to the Warranty Conditions, that on delivery, and throughout the Warranty Period, the Goods shall:
- 5.1.1 conform in all material respects with their description and any applicable Goods Specification;
- 5.1.2 be free from material defects in design, material and workmanship; and
- 5.1.3 be fit for any purpose held out by Citizen.
- 5.2 Subject to condition 5.3 and the satisfaction of the Warranty Conditions, if:
- 5.2.1 the Customer gives notice in writing to Citizen during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in condition 5.1;
- 5.2.2 Citizen is given a reasonable opportunity of examining such Goods; and
- 5.2.3 the Customer (if asked to do so by Citizen) returns any Components which are subject to a warranty claim to Citizen's place of business at the Customer's cost;
- Citizen shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 Citizen shall not be liable for any Goods' failure to comply with the warranty set out in condition 5.1 in any of the following events:
- 5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with condition 5.2;
- 5.3.2 the defect arises because the Customer failed to follow Citizen'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;
- 5.3.3 the defect arises as a result of Citizen following any drawing, design or Goods Specification supplied by the Customer;
- 5.3.4 the Customer alters or repairs such Goods without the written consent of Citizen;
- 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 5.3.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 The Warranty Conditions include that:
- 5.4.1 in respect of any Equipment supplied as new, Citizen's warranty at condition 5.1 shall only apply during the second year of the Warranty Period if the Customer has arranged for Citizen to service the Equipment by not sooner than 11 months and not later than 13 months after the date of delivery; and
- 5.4.2 in respect of any Component, Citizen's warranty at condition 5.1 shall only apply if the relevant Component was installed by Citizen or its representatives or agents;
- 5.5 In respect of any Component replaced under warranty in accordance with condition 5.2, Citizen's warranty at condition 5.1 will apply for a Warranty Period continuing, in respect of that Component only, until the later of:
- 5.5.1 the expiry of the Warranty Period for the Equipment into which the Component is fitted; and
- 5.5.2 six months commencing on the date of delivery in respect of Component.
- 5.6 Except as provided in this condition 5, Citizen shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in condition 5.1.
- 5.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.8 These Conditions shall apply to any repaired or replacement Goods supplied by Citizen.
6. **Title and risk**
- 6.1 Risk in the Goods shall pass to the Customer:
- 6.1.1 in the case of Goods delivered at Citizen's showroom, on completion of delivery of such Goods; or
- 6.1.2 in the case of Goods delivered at any location other than Citizen's showroom, at the time when the carrier performing delivery takes possession of the Goods.
- 6.2 Title to the Goods shall pass to the Customer upon:
- 6.2.1 Citizen receiving payment in full (in cash or cleared funds) for:

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- 6.2.1.1 the Goods; and
- 6.2.1.2 any other goods that Citizen has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
 - 6.3.1 store the Goods for which it has not paid separately from all other goods held by the Customer so that they remain readily identifiable as Citizen's property;
 - 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 6.3.4 notify Citizen immediately if it becomes subject to an Insolvency Event;
 - 6.3.5 give Citizen such information relating to the Goods as Citizen may require from time to time; and
 - 6.3.6 permit or procure permission for Citizen, its agents and authorised representatives to enter any premises of the Customer or of any third party where the Goods are stored in order to inspect whether the Customer is in compliance with this condition 6.3 and/or recover the Goods.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to an Insolvency Event, then, without limiting any other right or remedy Citizen may have:
 - 6.4.1 the Customer must immediately notify Citizen of the event;
 - 6.4.2 Citizen may at any time:
 - 6.4.2.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - 6.4.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. **Performance of the Services**
 - 7.1 Citizen shall from the date specified in the Order and for the duration of the Contract provide the Services to the Customer in accordance with the Contract in all material respects.
 - 7.2 Citizen shall use reasonable endeavours to perform the Services by the date(s) agreed between the parties, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
 - 7.3 Citizen warrants that it shall provide the Services with reasonable care and skill. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8. **Customer obligations**
 - 8.1 The Customer shall:
 - 8.1.1 ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;
 - 8.1.2 co-operate with Citizen in all matters relating to the Services;
 - 8.1.3 provide Citizen and Citizen Personnel with access to the Customer's premises, office accommodation and other facilities reasonably required by Citizen for the purpose of providing the Services;
 - 8.1.4 provide such information to Citizen as Citizen may reasonably request for the purpose of providing the Services and ensure that such information is accurate in all material respects;
 - 8.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the export, receipt and use of the Goods and/or Services before the Commencement Date, including, subject to condition 8.1.6, any export licences required in accordance with applicable laws;
 - 8.1.6 in respect of any application which Citizen makes in connection with the export of the Goods for a licence required under applicable laws governing export control (an "**Export Control Licence**"), provide such information and co-operation as Citizen requires in respect of such application, and reimburse Citizen for its costs incurred in making such application;
 - 8.1.7 comply with the terms of any Export Control Licence in respect of the Goods, and provide Citizen with such information and access to such records as Citizen requires for purposes of compliance with the terms of any such Export Control Licence;
 - 8.1.8 prepare the Customer's premises for the supply of the Services;
 - 8.1.9 keep and maintain all Citizen Materials at the Customer's premises in safe custody at its own risk, maintain Citizen Materials in good condition until returned to Citizen and not dispose of or use Citizen Materials other than in accordance with Citizen's written instructions or authorisation; and
 - 8.1.10 comply with all applicable law with respect to its activities under the Contract and its use of the Goods.
 - 8.2 If Citizen'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**"):
 - 8.2.1 Citizen shall without limiting its other rights or remedies have the right to suspend provision of the Goods and/or performance of the Services until the Customer remedies the Customer Default;
 - 8.2.2 Citizen shall not be liable for any losses sustained or incurred by the Customer arising directly or indirectly from Citizen's failure or delay to perform any of its obligations as set out in this condition 8.2; and
 - 8.2.3 the Customer shall reimburse Citizen on demand for any losses sustained or incurred by Citizen arising directly or indirectly from the Customer Default.

9. **Charges and payment**
- 9.1 The Price for the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Citizen's published price list in force on the date of delivery. The Price is exclusive of:
- 9.1.1 the costs and charges of packaging, insurance and transport of the Goods, which the Customer shall pay to Citizen; and
- 9.1.2 amounts in respect of value added tax ("VAT"), which the Customer shall pay to Citizen at the prevailing rate, subject to receipt of a valid VAT invoice.
- 9.2 The Charges for the Services shall be the charges set out in the Order, or, where specified in the Order, shall be calculated on a time and materials basis in accordance with this condition 9.2:
- 9.2.1 the Charges shall be calculated in accordance with Citizen's standard daily fee rates in force on the date on which performance of the Services commences; and
- 9.2.2 Citizen shall be entitled to charge the Customer for any expenses reasonably incurred by Citizen Personnel in connection with the Services, including travelling expenses, hotel costs, subsistence and any associated expenses, the cost of services provided by third parties and materials, and for any time spent on performance of the Services where such additional time was required as a result of the Customer's failure to comply with its obligations under the Contract.
- 9.3 The Charges for the Services exclude amounts in respect of VAT, which the Customer shall additionally be liable to pay to Citizen at the prevailing rate, subject to the receipt of a valid VAT invoice.
- 9.4 Citizen may invoice the Customer:
- 9.4.1 for the Goods plus VAT at the prevailing rate (if applicable) on or at any time after dispatch of the Goods; and
- 9.4.2 for the Charges plus VAT at the prevailing rate (if applicable) at such times as are specified in the Order or, if no such times are specified, monthly in arrears during the period of performance of the Services.
- 9.5 The Customer shall pay each invoice in full and in cleared funds within such period of the date of the invoice as is stated on the Order, or if no such period is stated, within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Citizen. Time of payment is of the essence.
- 9.6 Payment shall fall due in accordance with condition 9.5 and Citizen shall accordingly be entitled to sue for the price once it is due, despite the fact that title to the Goods has not passed to the Customer.
- 9.7 If the Customer fails to make any payment due to Citizen under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 1.5% per month. 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 amount.
- 9.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Citizen may at any time, without limiting any other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Citizen to the Customer.
10. **Intellectual Property Rights**
- 10.1 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Goods and Citizen Materials are and shall remain the sole property of Citizen or (as the case may be) the third party rights owner.
- 10.2 All Intellectual Property Rights arising in the performance of the Services (including the Deliverables) shall be owned by Citizen.
- 10.3 The Customer may use the Deliverables only for the purpose of receiving the Services. The Customer shall not supply the Deliverables to any third party or use the Services or the Deliverables to provide a service to any third party.
- 10.4 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify, keep indemnified and hold harmless Citizen from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation whether arising in tort (including negligence), in contract or otherwise and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Citizen as a result of or in connection with any claim made against Citizen for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Citizen's use of the Specification. This condition 10.4 shall survive termination of the Contract.
- 10.5 Citizen may inform third parties that it provides or has provided the Goods to the Customer. The Customer licenses Citizen to use its name and logo(s) for this sole purpose.
11. **Liability**
- 11.1 Nothing in these Conditions shall limit or exclude Citizen's liability for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of the Citizen Personnel (as applicable);
- 11.1.2 fraud or fraudulent misrepresentation;
- 11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1979;
- 11.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 11.1.5 defective products under the Consumer Protection Act 1987; or
- 11.1.6 any matter in respect of which it would be unlawful for Citizen to exclude or restrict liability.
- 11.2 Subject to condition 11.1:
- 11.2.1 Citizen shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, for:
- 11.2.1.1 any indirect, special, consequential or pure economic loss or damage;
- 11.2.1.2 any loss of profits, anticipated profits, revenue or business opportunities; or
- 11.2.1.3 damage to goodwill;

- (in each case arising as a direct or indirect result of the relevant claim);
- 11.2.2 without prejudice to condition 11.2.1, where any fire protection system is supplied by Citizen and installed as part of the Equipment (a "**Fire Protection System**"), Citizen's total liability to the Customer in respect of any losses suffered by the Customer arising out of or in connection with the Fire Protection System's:
- 11.2.2.1 false activation;
- 11.2.2.2 partial activation failure; or
- 11.2.2.3 complete failure to activate;
- regardless of the cause or reason for such failure or false activation, and regardless of whether the operation of the Fire Protection System resulted in a fire being extinguished or not, shall be limited to the cost of replacement of the defective Components of the Fire Protection System that caused the relevant failure or false activation, and Citizen shall, without prejudice to the earlier part of this condition 11.2.2, have no liability in any event for any losses suffered by the Customer to the extent that such losses arise from the correct activation of the Fire Protection System, or of any third party fire prevention system, being activated as a result of the correct or faulty operation of the Equipment; and
- 11.2.3 Citizen's total liability to the Customer in respect of all losses other than those identified at conditions 11.2.1 or 11.2.2 which arise under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the aggregate value of the Price and the Charges.
- 11.3 The Customer acknowledges that:
- 11.3.1 the values of the Price and of any Charges, including the Price for any Fire Protection System supplied by Citizen, have been agreed between the parties taking into account the application of the provisions of this Contract, including, without limitation, the Warranty Conditions and the limitations of liability set out in this condition 11, and that where the provisions of this Contract;
- 11.3.2 the limitations of liability set out in this condition 11 are reasonable taking into account the availability to the Customer of insurance against the potential losses it might incur under or in connection with this Contract; and
- 11.3.3 Citizen has recommended to the Customer that the Customer takes out and maintains at all times when using the Goods a suitable policy of insurance adequate to cover all potential losses arising in connection with the operation of the Equipment, including without limitation fire damage caused by the Equipment, including where such fire damage arises in any of the circumstances envisaged in condition 11.2.2.
12. **Confidentiality**
- 12.1 Subject to condition 12.2, each party to the Contract (the "**Recipient**") shall:
- 12.1.1 use the Confidential Information the other party (the "**Disclosing Party**") solely for the performance of the Contract; and
- 12.1.2 keep the Disclosing Party's Confidential Information strictly confidential and not, without the Disclosing Party's prior written consent, disclose it to any other person.
- 12.2 The Recipient may disclose the Disclosing Party's Confidential Information:
- 12.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Recipient's rights or carrying out its obligations under or in connection with the Contract and the Recipient shall ensure that such persons comply with this condition 12.2;
- 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; and
- 12.2.3 if such information is public knowledge or already known to the Recipient at the time of disclosure or subsequently becomes public knowledge other than by breach of any duty of confidentiality (contractual or otherwise).
- 12.3 This condition 12 shall survive termination of the Contract.
13. **Data protection**
- 13.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This condition 13 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 13.2 The parties acknowledge that for the purposes of Data Protection Legislation, each party (for such purposes, the **Processor**) may act as data processor of personal data relating to employees and agents of the other party, and in respect of which the other party is the data controller (for such purposes, the **Controller**) (where the terms personal data, data controller and data processor have the meanings as defined in the Data Protection Legislation). The Processor may be process such personal data solely for the purposes of, and for so long as is necessary for, the administration of the Contract.
- 13.3 Without prejudice to the generality of condition 13.1, each party (in its role as Controller) will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any personal data which it transfers to the other in its role as Processor, for the duration and purposes of the Contract.
- 13.4 Without prejudice to the generality of condition 13.1, the each party (in its role as Processor) shall, in relation to any personal data processed by it in connection with the performance by the Provider of its obligations under the Contract:
- 13.4.1 process that Personal Data only on the written instructions of the Controller unless the Processor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Data Processor to process personal data (EU Laws). Where the Processor is relying on laws of a member of the European Union or European Union law as the basis for processing personal data, the Processor shall promptly notify the Controller of this before performing the processing required by the EU Laws unless those EU Laws prohibit the Processor from so notifying the Controller;
- 13.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Controller, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction

or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 13.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- 13.4.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- 13.4.5 the Controller or the Processor has provided appropriate safeguards in relation to the transfer;
- 13.4.6 the data subject has enforceable rights and effective legal remedies;
- 13.4.7 the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- 13.4.8 the Processor complies with reasonable instructions notified to it in advance by the Controller with respect to the processing of the personal data;
- 13.4.9 assist the Controller, at the Controller's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 13.4.10 notify the Controller without undue delay on becoming aware of a personal data breach;
- 13.4.11 at the written direction of the Controller, delete or return personal data and copies thereof to the Controller on termination of the Contract unless required by applicable law to store the personal data; and
- 13.4.12 maintain complete and accurate records and information to demonstrate its compliance with this condition 13.

14. Termination

- 14.1 Without limiting its other rights or remedies, Citizen may terminate the Contract in whole or in part by giving the other party at least ninety (90) days' prior written notice, such notice to take effect on or after the first anniversary of the Commencement Date.
- 14.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if the other party:
 - 14.2.1 commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty days of being notified in writing to do so;
 - 14.2.2 (being a body corporate) is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration,

receivership, administrative receivership or liquidation or threatens to do any of these things, or takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application, the entering into of a board resolution or the giving of any notice) by it or by any other person in respect of any of these circumstances (an "**Insolvency Event**");

- 14.2.3 (being an individual) is declared bankrupt, enters into any composition or arrangement with his creditors, has a receiver appointed to any of his assets, or ceases to carry on business or takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application or the giving of any notice) by him or any other person in respect of any of these circumstances) (also an "**Insolvency Event**") (or, the other party being a partnership, has a partner to whom any Insolvency Event applies);
- 14.2.4 (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or
- 14.2.5 suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 14.3 Without limiting its other rights or remedies, Citizen may:
 - 14.3.1 terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and fails to pay all outstanding amounts within fourteen days after being given written notice to do so; or
 - 14.3.2 suspend provision of the Goods and/or Services under the Contract or any other contract between Citizen and the Customer if the Customer becomes subject to an Insolvency Event or Citizen reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 14.4 On termination of the Contract for any reason:
 - 14.4.1 the Customer shall immediately pay to Citizen all Citizen's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, Citizen shall submit an invoice, which the Customer shall pay immediately on receipt;
 - 14.4.2 the Customer shall return all of the Citizen Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, Citizen 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 other than receiving and using the Services;
 - 14.4.3 the parties' rights and remedies that have accrued as at termination shall be unaffected; and
 - 14.4.4 conditions that expressly or by implication survive termination of the Contract shall continue in full force and effect.

15. Force majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure

Event. A "**Force Majeure Event**" means any event which hinders, delays or prevents performance of a party's obligations and which is either beyond that party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure or interruption of energy sources, other utility service or transport network, acts of God, war, threat of or preparation for war, armed conflict, terrorism, riot, civil commotion, interference by civil or military authorities, sanctions, embargo, export or import restriction, quota or prohibition, breaking off of diplomatic relations, national or international calamity, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosion, collapse of building structures, fire, flood, drought, storm, earthquake, volcanic eruption, loss at sea, epidemic, pandemic or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

16. **General**

16.1 **Assignment subcontracting and other dealings**

16.1.1 Citizen may at any time assign, transfer, mortgage, charge, declare a trust over, subcontract, delegate or deal in any other manner with any or all of its rights or obligations under the Contract.

16.1.2 The Customer shall not assign, transfer, mortgage, charge, declare a trust over, subcontract, delegate or deal in any other manner with any or all of its rights or obligations under the Contract without Citizen's written consent.

16.2 **Entire agreement**

The Contract (incorporating these Conditions) 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. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Citizen which is not set out in the Contract.

16.3 **Variation**

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Citizen.

16.4 **Waiver**

Except as set out in condition 2.6, 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 or 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.

16.5 **Severance**

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

16.6 **Notices**

16.6.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or by a signed-for next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

16.6.2 Any notice shall be deemed to have been received:

16.6.2.1 if delivered by hand, on signature of a delivery receipt or, if not signed for, at the time the notice is left at the correct address;

16.6.2.2 if sent by pre-paid first-class post, at 09:00 on the second Business Day after posting; and

16.6.2.3 if sent by a signed-for next working day delivery service, at the time recorded by the delivery service.

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

16.6.4 A notice given under the Contract is not valid if sent by email.

16.7 **Third party rights**

No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms.

16.8 **Relationship**

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between Citizen and the Customer, constitute either party the agent of the other party or authorise either party to make or enter into any commitments for or on behalf of the other party.

16.9 **Governing law**

The 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. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to this Contract. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms) shall apply where specified in any Order but where they conflict with this Contract, this Contract shall prevail.

16.10 **Jurisdiction**

The Customer 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 the Contract or its subject matter or formation (including non-contractual disputes or claims). Nothing in this condition shall limit Citizen's right to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdictions.