



1 Introduction

1.1 OTM is OTM Servo Mechanism Limited, a company registered in England with Company Number 00696076 whose principal place of business is at The Avenue, Egham, Surrey TW20 9AL.

1.2 These are the terms and conditions upon which OTM provides products and services to its customers.

2 Definitions

2.1 In these terms and conditions,

(a) the following expressions shall have the following meanings:

"Business Day" means a day (other than a Saturday, Sunday, bank or public holiday) when banks in London are open for business;

"Contract" has the meaning given to that term in clause 6.3, and a reference to Contract shall include these terms and conditions; "Customer" means any person who enters into a Contract with OTM in accordance with the terms of clause 6.3;

"Data Protection Legislation" means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including the privacy of electronic communications); "Delivery Date" means the date that OTM notifies the Customer that the Products are available for collection in accordance with clause 10.2;

"Delivery Location" means the location of OTM's premises where the Products are to be made available for collection by the Customer as confirmed in writing to the Customer by OTM;

"Part" means any spare part which is required for maintenance, repair and/or overhaul of a Product;

"Products" means the type and specification of products to be supplied by OTM to the Customer under a Contract, and for clarity includes any Products supplied by OTM as part of the supply of any Services and also any Part(s) to be supplied by OTM to the Customer from time to time under a Contract;

"Services" means the type and specification of Services to be supplied by OTM under a Contract as set out in the Customer's order; "Specification" means, in respect of each Contract, any applicable specification in relation to the Products which the Customer requires the Products to conform to, including any requirements under any applicable airworthiness directives from time to time;

"UK Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC); and the Privacy and Electronic

Communications Regulations 2003 (SI 2003/2426) as amended; and

"Warranty Period" means the period(s) applicable respectively to new Products, Parts and repaired Products as set out in clause 12.7 and in each case commencing from and inclusive of the respective Delivery Dates;

(b) words importing the singular shall include the plural and vice versa, words importing a gender shall include all genders, and words importing persons shall include bodies corporate, unincorporated associations and partnerships;

(c) any reference to a statute, statutory provision or subordinate legislation is a reference to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation;

(d) 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;

(e) references to clauses are references to clauses of these terms and conditions; and

(f) headings are included for ease of reference only and shall not affect the interpretation or construction of these terms and conditions.

3 Application

3.1 These are the terms and conditions upon which OTM is willing to provide the Products and/or Services to the Customer and they will apply to all dealings between OTM and the Customer (as revised and/or updated from time to time in accordance with clauses 3.2 or 3.3) to the exclusion of all other terms and conditions which the Customer may purport to apply under any purchase order, confirmation of order or similar document.

3.2 OTM may revise or update these terms and conditions at any time without notice.

3.3 Subject to clause 3.2, no variation to these terms and conditions will be binding unless confirmed in writing by an authorised representative of OTM.

4 Information about the Products and Services

4.1 All samples, drawings, descriptive matter, specifications and advertising which OTM issues and any descriptions or illustrations contained in OTM's brochures or publications or on OTM's website are issued or published for the sole purpose of giving the Customer a general idea of OTM's products and services and do not form part of any Contract or have any contractual force. Although OTM makes every effort to ensure that information about its products and services is correct, the Customer acknowledges that sometimes such information may be incomplete, out of date or inaccurate

and the Customer has placed no reliance on this information save as may be expressly agreed with OTM in writing.

5 Quotations

5.1 Upon request, OTM may provide a quotation to the Customer (in written or electronic form) with respect to a specific opportunity to provide Products and/or Services to the Customer. The Customer shall provide OTM with any information reasonably requested by OTM including any Specifications in order to provide the quotation.

5.2 All quotations and offers made by OTM to the Customer about the sale of Products and/or the provision of Services are subject to these terms and conditions.

5.3 All quotations and offers OTM makes to the Customer are made on an "invitation to treat" basis only. This means that OTM is not obliged to supply any products and/or provide any services to Customer on the terms stated in any quotation until, and only to the extent that, those terms are agreed as part of a binding written Contract. For the avoidance of doubt OTM shall not be obliged to agree any Contract or any specific terms with the Customer, whether pursuant to a quotation provided by OTM or an order placed by the Customer or otherwise. Each quotation OTM makes shall lapse automatically 30 days after the date on which it is stated as having been made unless otherwise communicated in writing by OTM on or before that date.

6 Orders and Repairs

6.1 To place an order with OTM for the purchase of Products and/or Services, or for any repairs to a Product, Customer must provide to OTM an official company purchase order containing at least the reference for the quotation provided by OTM, a description of the Products and/or Services and/or repairs required with the time frames for delivery and, in the case of the Products, the quantity of each of the Products required.

6.2 The Customer acknowledges and agrees that any order for Products and/or Parts must be issued to OTM within the lead time (specified in writing by OTM, including in the quotation and/or order acknowledgment form) prior to the required Delivery Date.

6.3 OTM accepts an order placed by the Customer either at the time OTM sends the Customer written confirmation (including by e-mail) that OTM accepts the Customer's order or, if earlier, at the time OTM commences the provision of the Services (as applicable). It is at the moment OTM accepts the Customer's order in accordance with this clause 6.3 that a binding contract of sale is made between the Customer and OTM for the sale of the Products and/or the provision of Services specified in the Customer order ("**Contract**"). Unless otherwise agreed in writing between the Customer and OTM, each Contract is subject to these terms and conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Customer may purport to apply under any purchase order, confirmation of order or similar document).

6.4 Without prejudice to clauses 5.3, 6.1 and 6.3, all orders that the Customer places and all confirmations of orders

that OTM gives are subject to the provisions of these terms and conditions. If there is any inconsistency between these terms and conditions and any order placed by the Customer or confirmation OTM gives then these terms and conditions shall prevail unless expressly provided otherwise in writing by OTM.

6.5 The Customer may cancel or modify an order at any time before OTM accepts it in accordance with clause 6.3.

6.6 The Customer may not cancel or modify an order that has been accepted by OTM unless:

(a) the Customer notifies OTM in writing that the Customer wishes to modify or cancel that order; and

(b) an authorised representative of OTM agrees in writing to that modification or cancellation; and

(c) the Customer agrees to pay all OTM's reasonable and proper costs up to the requested date of the modification or cancellation and, in the case of modification, all reasonable and proper costs directly associated with the modification itself.

7 Price

7.1 If OTM has provided a quotation in respect of the Products and/or Services and/or repairs to be provided under a Contract, then no alteration to that price may be made without the prior written consent of OTM. The price in the quotation or, if relevant, the altered price to which OTM has consented, shall be the price payable by Customer but subject always to any variation to such price effected, or additional amounts payable, in accordance with these terms and conditions.

7.2 Details of any discount or other non-standard pricing structure that is agreed between the Customer and OTM from time to time shall be treated by the Customer as information of a confidential nature. The Customer must keep this information confidential and not disclose it to any third party. The Customer acknowledges and agrees that any and all discounts afforded to the Customer are and shall remain conditional on the Customer discharging its payment obligations in full in accordance with these terms and conditions.

7.3 All prices, howsoever agreed, are (unless otherwise expressly agreed in writing by OTM):

(a) exclusive of any applicable value added or other applicable sales tax. Where applicable, OTM will add value added or other applicable sales tax to any charges at the current rate at the date OTM invoices for the Products and/or Services;

(b) inclusive of all charges for packaging and packing; and

(c) exclusive of insurance and delivery of the Products and/or Services (as applicable) and any duties, taxes or levies including value added tax unless otherwise agreed in writing by OTM.

8 Payment

8.1 If OTM informs the Customer that it requires the Customer to pay:

- (a) a non-returnable deposit; or
- (b) the full purchase price for the Products and/or Services,

in advance of the Delivery Date or the Services being commenced then OTM may invoice Customer for, and Customer must pay, the required amount in cleared funds prior to that date.

8.2 Subject to clause 8.1, OTM may invoice the Customer for the Products on or before the date that the Products are made available for collection. OTM shall be entitled to deliver the Products by way of separate instalments or batches. If OTM makes the Products available for collection in instalments or batches on different dates then, unless stated otherwise by OTM, OTM will only invoice the Customer for those Products which it has made available for collection.

8.3 Subject to clause 8.1, OTM will invoice Customer for the Services provided under a Contract on a monthly basis or, where the Services are to be provided for less than a month, once the Services have been completed.

8.4 Subject to clause 8.1, in respect of each invoice OTM submits to Customer, Customer must pay the total amount set out in the invoice so that OTM receives in cleared funds a sum equal to the total invoiced amount within 30 days of the date of the invoice. Customer must pay the total amount invoiced even if it disputes any amount on the understanding that if it is resolved that the total is too great OTM will rectify its mistake by either promptly making an appropriate payment to the Customer or providing the Customer with a credit note (at the Customer's discretion). The Customer must notify OTM of any query it has about an invoice within seven days of the date of the invoice otherwise the invoice will be deemed accepted by the Customer.

8.5 All payments Customer makes must be in pounds sterling unless stated otherwise on OTM's invoice.

8.6 Customer must make all payments due to OTM without any deduction by way of set-off, counterclaim, discount, abatement or otherwise.

8.7 If Customer fails to pay OTM on time OTM may, without prejudice to any other rights or remedies it may have:

- (a) charge the Customer interest on the outstanding amount at the rate of 5% above the National Westminster Bank PLC's base rate from time to time, accruing on a daily basis until payment is made in full;
- (b) refuse to supply Customer with any further Products or provide any further Services until payment is made in full;
- (c) disallow any discount that may apply to any part of the outstanding payment; and/or
- (d) deduct any monies OTM owes the Customer from any monies the Customer owes OTM.

9. Certification of Products

All Products supplied by OTM are factory new and supplied with a UK CAA Form 1. For goods where a UK CAA Form 1 cannot be provided a Certificate of Conformity (CofC) will be issued.

10 Delivery of Products

In respect of each Contract:

10.1 The Products shall be delivered by OTM ex-works at the Delivery Location (in accordance with EXW under the Incoterms 2020 Rules).

10.2 Unless otherwise agreed OTM will notify the Customer when the Products or repairs (as the case may be) are ready for collection and the Customer must collect the Products or repairs (as the case may be) within five Business Days of OTM's notification. If the Customer fails to collect or procure the collection of the Products or repairs (as the case may be) within five Business Days then OTM may charge the Customer and the Customer will be liable to pay OTM for additional daily storage costs to be notified until the Products or repairs (as the case may be) are collected. The Customer acknowledges that this is a genuine estimate of the likely costs to be incurred by OTM in respect of any delay in collection by the Customer. Unless otherwise agreed in writing with OTM, should the Customer fail to collect or procure collection of Products after 20 Business Days OTM may cancel delivery and re-allocate the Products if there be an alternative Customer demand. In such circumstances the Customer will subsequently be advised of the next available date for collection of such Products.

10.3 Risk of damage or loss of the Products or repairs (as the case may be) shall pass from OTM to Customer in accordance with EXW and shall be deemed to pass when the Product is made available at the Delivery Location for collection by the Customer. Risk in and to the Product to be repaired shall pass from the Customer to OTM at the point at which the Product to be repaired is received at OTM's premises in Egham, Surrey.

10.4 OTM recognises that the Customer may request delivery dates in its orders for Products. OTM will use reasonable endeavours to meet Customer's requested delivery dates but OTM cannot, and does not, guarantee to deliver the ordered Products by any specific date unless expressly agreed with an authorised representative of OTM. Time shall not be of the essence of the Contract with respect to the delivery obligations of OTM and OTM accepts no liability for any loss or damage the Customer may suffer as a result of any failure by OTM to deliver the ordered Products on or by a specific date.

10.5 The Customer must make all arrangements necessary for the Customer to take delivery of the Products when OTM makes them available for collection, including providing labour and suitable loading equipment for the loading of the delivered Products.

11 Title to Goods

11.1 Title to the Products shall not pass to the Customer until (the earlier of): (a) OTM receives payment in full (in cash or cleared funds) for the Products and all other sums that are or that become due to OTM from the Customer for sales of Products or on any account, in which case title to such Products shall pass at the time of payment of all such sums; or (b) the Customer resells those Products, in which case title to those Products (and only those Products sold by the Customer) shall pass to the Customer at the time specified in clause 11.4.

11.2 The Customer must clearly identify Products that it has collected from OTM but to which OTM retains title ("ROT Products") as belonging to OTM and keep them safe, secure, comprehensively insured against loss and damage and separate from other property.

11.3 Except as otherwise expressly set out in this clause 11 the Customer must not:

- (a) part with possession of the ROT Products;
- (b) allow any right or encumbrance to be created over the ROT Products; or
- (c) make, nor allow anyone other than OTM to make, any additions, alterations or modifications to, or remove any part of, any of the ROT Products.

11.4 The Customer may use or resell ROT Products in the ordinary course of the Customer's business; however if the Customer resells ROT Products before OTM has received payment in full for them, it does so as principal and not as OTM's agent, and title to those ROT Products shall pass from OTM to the Customer immediately before the time at which resale by the Customer occurs, and the Customer hereby acknowledges and agrees that the proceeds of sale shall belong to OTM.

11.5 If any ROT Products are damaged or lost, the Customer:

- (a) must notify OTM of the damage or loss; and
- (b) make an insurance claim for those ROT Products that are lost or damaged and pay OTM the proceeds of the insurance claim.

11.6 In respect of any repairs to Products, title in and to the relevant Product will remain with the party in which title is vested at the time of repair, as more fully described in this clause 11.

12 Warranty

12.1 OTM recommends that the Customer checks that the Products delivered by OTM conform to the relevant Contract at the time the Customer collects the Products.

12.2 OTM warrants that each Product it supplies to the Customer shall:

- (a) comply with the requirements of any applicable Specification;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);
- (c) be free from material defects in design, material and workmanship; and
- (d) is (unless agreed otherwise by OTM in writing or a repair to a Product already supplied by OTM) new.

12.3 If the Customer finds that any of the Products do not conform to these terms and conditions or the Contract then Customer must notify OTM of this fact in writing within the relevant Warranty Period. If OTM does not receive notification from Customer within the Warranty Period then the Customer will be deemed to have accepted that: (i) the Products are free

from damage; and (ii) the Products conform to these terms and conditions and the relevant Contract.

12.4 If the Customer notifies OTM that OTM has not delivered all the Products ordered by it then the Customer must promptly provide OTM with reasonable evidence supporting its claim. If OTM accepts Customer's claim then OTM will by way of full and final settlement of all its obligations and liabilities to Customer in relation to the claim at OTM's discretion either: (i) credit the Customer's trading account with an amount equal to any monies the Customer has paid OTM for the undelivered Products; (ii) refund any monies Customer has paid OTM for the undelivered Products; or (iii) deliver to the Customer the undelivered Products.

12.5 Subject to clause 12.6, if during the relevant Warranty Period the Customer notifies OTM that any of the Products were damaged whilst they were at OTM's risk or do not conform to these terms and conditions or the relevant Contract then Customer must promptly return the Products to OTM and provide OTM with reasonable evidence supporting its claim. If OTM accepts the Customer's claim then OTM will by way of full and final settlement of all its obligations and liabilities to Customer in relation to the claim at OTM's sole discretion either: (i) credit the Customer's trading account with an amount equal to any monies Customer has paid OTM for the damaged/non-conforming Products; (ii) refund any monies Customer has paid OTM for the damaged/non-conforming Products; (iii) repair the damaged/non-conforming Products; or (iv) replace the damaged/non-conforming Products with Products that conform with these terms and conditions and the relevant Contract.

12.6 OTM will have no obligation, responsibility or liability to the Customer under these terms and conditions or the relevant Contract to the extent that any defect in the Products is attributable to the acts and omissions of the Customer or any third party.

12.7 Unless otherwise agreed in specific contractual arrangements between OTM and the Customer, the Warranty Period for new Products shall be 12 months from the Delivery Date, excluding normal wear and tear of consumable items. For Parts and repaired Products, the Warranty Period is 12 months from the Delivery Date, excluding normal wear and tear of consumable items. In the case of repaired Products, the Warranty will apply to the actual repair only.

13 Goods bought for resale

13.1 If the Customer resells any Products then it must:

- (a) resell the Product in its original state and where applicable its original, sealed and unopened packaging;
- (b) not modify, delete or obscure any copyright, trade mark, patent or other proprietary notice which is on the Product, the Product's packaging or the documentation that accompanies the Product;
- (c) not use or apply on or in relation to the Product (including as or part of any corporate, trade or business name) any other trademarks, logos or wordings;
- (d) pass onto its customers all documentation, including instructions of use, that OTM supplies to customer in respect of the Product;

(e) not make any representations, warranties, claims or guarantees to its customers about OTM or the Product that are false or misleading or inconsistent with those contained in the documentation supplied by OTM with the Product; and

(f) adhere to any additional terms and conditions that OTM may notify to Customer from time to time.

13.2 The Customer shall indemnify OTM in full against all costs, damages, losses and expenses OTM incurs or suffers as a result of the Customer's failure to comply with its obligations under clause 13.1.

14 Provision of Services

14.1 In respect of each Contract, OTM will provide to the Customer the Services set out in that Contract. OTM aims to provide the Services in accordance with any dates or timetable set out in the Contract but cannot, and does not, guarantee to provide the Services in accordance with any dates or timetable. Time shall not be of the essence with respect to OTM's delivery or performance obligations and OTM accepts no liability for any loss or damage Customer may suffer as a result of OTM's failure to provide the Services in accordance with any dates or timetable.

14.2 If OTM personnel require access to any premises (other than OTM's own premises) to provide any Services then Customer will be responsible for making access to such premises available to OTM to enable OTM to carry out the Services.

15 Export controls

15.1 Customer represents, warrants and undertakes that it has obtained all necessary export approvals, licences, permits and authorisations for the supply of Products and/or Services, including those for dual use, to the end user, in respect of (i) the Export Administration Regulations of the US Department of Commerce; and (ii) the International Traffic in Arms Regulations (including the requirement to obtain, where applicable, the written authorisation of the US Office of Defence Trade Control); and (iii) any other applicable regulations, legislation or other export controls, (together, "Export Approvals").

15.2 It shall be the responsibility of the Customer to identify the need to obtain (and, where applicable, maintain) any Export Approvals and to comply on an ongoing basis with the requirements and obligations imposed by any regulatory authority administering and/or enforcing the same.

15.3 Customer undertakes, represents and warrants to OTM that it shall not re-transfer or otherwise dispose of or use any Products and/or Services in breach of any applicable laws and/or regulations in force at the time and applicable to those Products and/or Services, whether made known to the Customer by OTM or not.

15.4 In providing any Services to Customer, OTM warrants that it shall:

(a) perform the Services using reasonable care, skill and diligence and in accordance with good industry practice;

(b) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that OTM's obligations are fulfilled in accordance with these terms and conditions;

(c) ensure that the Services conform with any descriptions and Specifications set out in OTM's quotation or any other documentation provided to Customer by OTM; and

(d) provide all equipment, tools and vehicles and such other items as are required to provide the Services and which for the avoidance of doubt shall remain the property of OTM.

15.5 For the purpose of assisting the Customer to assess the reliability or quality of the Products supplied by OTM, OTM will on reasonable notice and subject to any expenses incurred by OTM being reimbursed by Customer, provide a technical expert at the Customer's location to provide reasonable assistance with such assessment and/or installation (as the case may be).

15.6 During the relevant Warranty Period, OTM shall, during United Kingdom Business Days between the UK hours of 0800 and 1700 on Monday to Thursday and between 0800 and 1300 on Fridays (excluding bank and public holidays) provide free remote technical support in respect of the Products delivered.

15.7 OTM shall use reasonable endeavours to limit lead time for Parts.

16 Termination

16.1 Either party may terminate any Contract by giving notice to the other party on or at any time after the occurrence of any of the following events:

(a) the other party makes any arrangement or composition with its creditors; the other party commits an act of bankruptcy; a receiving order is made against the other party; insolvency or winding-up proceedings are instituted by or against the other party (otherwise than for the purposes of a solvent corporate reorganisation); a receiver, liquidator or administrator is appointed for the other party; any of the other party's assets is the object of attachment, sequestration or other type of comparable proceeding; the other party is unable or admits in writing its inability to pay its debts as they fall due; the other party ceases or threatens to cease to carry on business; or the other party suffers or takes any similar or analogous action in any jurisdiction in consequence of debt; or

(b) the other party commits a material breach of the Contract and either that breach cannot be remedied or, in respect of a breach that is capable of remedy, the other party fails to remedy that breach within 30 days of being requested to remedy that breach.

16.2 OTM may terminate any Contract if it reasonably believes that any of the events mentioned in clause 16.1(a) are about to occur in relation to Customer.

16.3 On termination of a Contract:

(a) the Customer must return to OTM all property belonging to OTM then in the Customer's possession, including all materials supplied or made available by OTM in connection with the Contract;

(b) clauses 2, 3, 4, 8, 12, 13, 17, 18, 19, 20, 21 and 23 of these terms and conditions will survive the termination of the Contract, as will any other clause which by its nature is intended to survive termination;

(c) the Customer shall immediately pay to OTM all of OTM's outstanding unpaid invoices and interest, and, in respect of Services or Products supplied but for which no invoice has been submitted, OTM shall submit an invoice, which shall be payable by Customer immediately on receipt;

(d) transfer all the proceeds of sale in respect of all ROT Products (which Customer has sold) to OTM except to the extent that the Customer has already paid for such ROT Products pursuant to clause 16.3 (c); and

(e) deliver back to OTM, at Customer's cost, those ROT Products that are not lost or sold (except to the extent that the Customer has already paid for such ROT Products pursuant to clause 16.3(c)), and the

Customer agrees that OTM may enter the Customer's premises or any other premises to which Customer has a right to enter to recover such Products.

16.4 Any termination of a Contract shall not prejudice any rights which may have accrued to either party prior to the point of termination.

17 Confidentiality

Customer shall hold in confidence all information concerning OTM's business and affairs that OTM provides to Customer which is designated as confidential or which by its nature is confidential. Customer shall not disclose such information to any third party and shall, immediately following OTM's request, return all such information to OTM.

18 Data Protection

Both parties will comply with all applicable requirements of the Data Protection Legislation insofar as such requirements relate to a Contract and/or the parties' obligations under or in connection with it. For the avoidance of doubt, neither party shall Process Personal Data (as such terms are defined in the Data Protection Legislation) on behalf of the other party, under or in connection with a Contract, unless the parties have entered into a separate processing agreement which satisfies the requirements of the Data Protection Legislation.

19 Notices

19.1 All notices and communications between the parties shall be in writing (which shall include, subject to clause 19.4, e-mail).

19.2 Subject to clauses 19.4 and 19.5, any notice or other communication sent to Customer shall be sufficient if sent to a postal or email address notified to OTM for the purpose or to the postal or email address of Customer last known to OTM.

19.3 Subject to clauses 19.4 and 19.5, notices or other communications sent by Customer to OTM shall be sent to the postal or email address given for OTM on the face of the quotation or otherwise provided to Customer by OTM marked

for the attention of the VP Business Development (ianmckeand@otmservo.com).

19.4 The Customer may not use e-mail as a valid means of serving any notice to terminate any Contract and neither party may use e-mail to serve on the other any legal and/or court document (including the service, delivery or notification of any without prejudice communications, claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with any Contract or these terms and conditions).

19.5 Any notice shall be deemed to have been served:

(a) if delivered personally, at the time of delivery; or

(b) if posted, at 10.00AM on the second Business Day after it was put into the post; or

(c) if sent by e-mail, upon the generation of a receipt notice by the recipient's server or, if no receipt notice is generated, upon delivery to the recipient's server.

19.6 In proving service of a notice it shall be sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid first class post or by prepaid airmail, or that the e-mail was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's e-mail system, as the case may be.

20 Limitation on Liability

20.1 Nothing in these terms and conditions or any Contract shall exclude or limit either party's liability for: (i) death or personal injury arising from that party's negligence; (ii) fraud or fraudulent misrepresentation; or (iii) any other liability that cannot be limited or excluded by law.

20.2 The warranties and conditions stated in these terms and conditions are in lieu of all other conditions, warranties or other terms that might be implied into or incorporated into these terms and conditions or any Contract whether by statute, common law or otherwise, all of which are hereby excluded to the extent permitted by law.

20.3 Subject to clause 20.1, OTM will not be liable to Customer under any statute or in contract, tort or otherwise for any:

(a) loss of profits, business revenue, business opportunity, contracts, goodwill and/or anticipated savings;

(b) indirect or consequential loss or damage;

(c) damage remedied by OTM within a reasonable time;

(d) any loss suffered that is avoidable through Customer's reasonable conduct, including (where applicable) Customer backing up all data available and following OTM's reasonable advice in relation to any Services OTM provides to Customer;

which arises out of or in relation to these terms and conditions or any Contract.

20.4 Subject to clause 20.1, OTM's total aggregate liability to the Customer under or in connection with each Contract (whether such liability arises under any statute or in

contract, tort or otherwise) shall not in any event exceed the total price payable by the Customer under the Contract.

21 **Assignment**

21.1 The Customer must not assign, sub-contract or dispose of any of its rights or obligations under these terms and conditions or any Contract without prior written consent from OTM.

21.2 Both the Customer and OTM shall in all cases act as principal in respect of these terms and conditions and each will be responsible and liable for the acts and omissions of its employees and sub-contractors.

22 **Force Majeure**

OTM shall not be liable to Customer for any delay or failure to perform its obligations under a Contract due to causes beyond its reasonable control. This includes (i) any riots and other forms of civil disruption, (ii) war and/or terrorist attack, (iii) any law or government order, rule, regulation or direction, or any action taken by a government or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary licence or consent, (iv) fire, explosion or accidental damage, (v) adverse weather conditions, (vi) interruption or failure of utility service (including electric power, gas or water), (vii) pandemics, epidemics, and/or (viii) industrial disputes.

23 **General**

23.1 No third party shall have any rights under or in connection with these terms and conditions or any Contract by virtue of the Contracts (Rights of Third Parties) Act 1999.

23.2 No delay or failure by OTM in exercising or enforcing any right or remedy under these terms and conditions or any Contract will be deemed to be a waiver of any such right or remedy, nor will that failure operate to bar the exercise or enforcement of such right or remedy at any future time.

23.3 If at any time any provision of these terms and conditions is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair the legality, validity or enforceability in that jurisdiction of any other provision of these terms and conditions, or the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of these terms and conditions.

23.4 These terms and conditions and each Contract and any non- contractual obligations in connection with the same are governed by and will be construed in accordance with the laws of England & Wales and, except as set out in clause 23.5, OTM and the Customer hereby irrevocably submit to the exclusive jurisdiction of the English courts in respect of the same.

23.5 If Customer breaches any Contract, then the Customer acknowledges and agrees that OTM may bring a claim against the Customer for the breach in any jurisdiction in which the Customer or its assets are located.