Bystronic UK Limited - Conditions of Sale

1. DEFINITIONS AND APPLICATION

In these Conditions:

1.1 "Buyer" means a person to whom the Seller supplies or is to supply Goods and/or Services pursuant to a Contract;
1.2 "Conditions" means these conditions of sale;
1.3 "Contract" means a Contract for the sale of Goods and/or Services made by or on behalf of the Seller with a Buyer;
1.4 "Goods" means the goods which the Seller supplies pursuant to a Contract;
1.5 "Order" means an order in writing for the Goods and/or Services received by the Seller from the Buyer;
1.6 "Services" means the Services which the Seller provides pursuant to a Contract;
1.7 "Seller" means Bystronic UK Limited;
1.8 headings are for convenience only; and
1.9 any reference to any legislative provision shall include any subsequent re-enactment or amending provision.

2. APPLICATION AND ACCEPTANCE

2.1 All quotations and tenders and all other communications are given, sent or made on the condition that the Seller shall not in any way be bound thereby. No Order placed by the Buyer in pursuance of a quotation or tender or otherwise shall be binding unless and until the same is accepted by the Seller in writing upon its official acknowledgement form.

2.2 All Contracts between the Seller and the Buyer for the sale or supply of any Goods or Services by the Seller shall be on the terms of these Conditions. The acceptance by the Seller of any Order from the Buyer shall be deemed to incorporate all of these Conditions. No terms contained in any order form or other document of the Buyer and no variation or departure from these Conditions and no other term or condition whatsoever which is not contained herein shall have any force or effect whether as part of or as collateral to the Contract except insofar as the Seller has expressly agreed thereto in writing or except insofar as statute may require.

2.3 The Buyer's acceptance of delivery of the Goods or performance of the Services shall (without prejudice to this Condition 2 or any other manner in which acceptance of these Conditions may be evidenced) constitutes unqualified acceptance of these Conditions.

3. SPECIFICATION

3.1 Except where the Seller and the Buyer have otherwise expressly agreed the sale shall not be a sale by sample and samples submitted and descriptions, illustrations or forecasts in trade literature or brochures or otherwise shall be treated as showing type, class and general character only and not as importing terms or warranties as to substance, performance, colour, quality or dimension, and any failure to conform with such samples, descriptions or illustrations shall not constitute any breach of Contract on the part of the Seller.

3.2 The Goods and Services are supplied on the terms that they comply with the written description contained in the Contract.

3.3 Except where the Seller and the Buyer have otherwise expressly agreed in writing or except where the Seller has submitted to the Buyer a specification which it has expressly specified to be binding upon the Seller the Buyer is deemed to have satisfied himself as to the suitability of the Goods for the purpose for which the Buyer requires them and it is not a term of Contract that the Goods are fit for that purpose.

4. PRICES

Quotations are valid for 30 (thirty) days from their date given and exclude carriage and packing unless specifically stated otherwise in the quotation. Insurance, duties, Value Added Tax and any other taxes are not included. All quoted prices are subject to fluctuations in the exchange rate between Sterling and the currency of the country in which the goods are manufactured. The supplier reserves the right to a proportional increase of the contract price if material prices increase by more than 3 % between the date of conclusion of the contract and the actual date of delivery. If this threshold is reached, the percentage of increase shall be shared 50/50 between the parties. E.g. an increase of 5% shall entitle the supplier to a price increase of 2.5%. The relevant index for determining the price increase shall be the OECD Producer Price Index, with respect to the OECD-Total numbers (https://data.oecd.org/price/producer-priceindices-ppi.htm).

5. INSTALMENTS

5.1 Unless the Contract provides to the contrary the Seller may deliver by instalments.

5.2 Where delivery is to be made by instalments each instalment shall be treated as a separate Contract and delay, default or non-delivery in respect of any instalment on the part of the Seller shall not entitle the Buyer to cancel the remainder of the Contract.

5.3 Failure by the Buyer to pay for any instalment or delivery when payment is due shall entitle the Seller to withhold further deliveries.

6. DESPATCH AND STORAGE

6.1 Goods will be delivered to the address specified in the Seller's official acknowledgement form or to such other location as may be agreed between the Seller and the Buyer.

6.2 Unless otherwise agreed in writing by the Seller, the Buyer shall unload the Goods immediately on their arrival at the Buyer's premises.

6.3 The Buyer must:

6.3.1 immediately notify the Seller in writing if the Goods have not been received within 7 (seven) days of the date of the Seller's advice note, or the despatch note of the Seller's agent;

6.3.2 notify the Seller and the carrier within 2 (two) days of receipt of the Goods if there is any damage, shortage or breakage; and

6.3.3 endorse carriers way bill "Unexamined".

6.4 If the Buyer refuses or fails to take delivery of Goods delivered in accordance with a Contract or fails to take any action necessary on its part for delivery or shipment of the Goods, or if the Seller is prevented, hindered or delayed from delivering the Goods or performing the Services by reason of delay on the part of the Buyer in providing necessary information, the Seller shall be entitled to terminate the Contract with immediate effect, dispose of the Goods as the Seller may determine and to recover from the Buyer any loss and additional costs incurred as a result of such refusal or failure (including, without limitation, storage costs from the due date of delivery).

7. TIME

The Seller will endeavour to meet the Buyer's delivery requirements but accepts no obligation to deliver by any specified date. Delivery dates quoted by the Seller or included in the Contract are estimates only and time for delivery or performance shall not be of the essence and are based upon the Buyer's deposit being received by the Seller within three working days of despatch of the deposit invoice.

8. PAYMENT

8.1 Payment in respect of Services or spare parts or consumables shall be made within 30 days after the Services are (in the opinion of the Seller) completed or the spare parts or consumables are delivered.

8.2 In respect of machinery, terms of payment are as follows:

8.2.1 a deposit of 30% of the total Contract price, plus Value Added Tax shall be paid by the Buyer forthwith upon the Seller notifying Order acceptance to the Buyer in writing; and

8.2.2 an amount of 70% of the total Contract price, plus Value Added Tax shall be paid on delivery of the machine to your works. In the event delivery is delayed at the Buyer's request this amount shall be paid on the date the machine would have been delivered to your works had the Buyer not requested a delay. Payment must be received before commissioning can commence.

8.3 Time of payment is of the essence of the Contract. If the Buyer shall fail to pay any amount when it is due then the purchase price of all Goods and Services invoiced or despatched by the Seller shall become forthwith due and payable by the Buyer and the Seller shall further be entitled to treat as cancelled this Contract and every other contract made between the parties or at the Seller's option to suspend or to continue the delivery of Goods or Services thereunder without prejudice to any other rights of the Seller.

8.4 If any sum due under the Contract is not paid when due then, without prejudice to the parties' other rights under the Contract, that sum will bear interest from the due date until payment in full, both before and after any judgement, at 2% per annum over the base rate from time to time of Barclays Bank PLC.

8.5 The Buyer shall not be entitled by reason of any dispute relating to the Goods or Services or any claim made by the Buyer under this or any other contract between the parties to withhold payment of any amount which is due to the Seller hereunder or to set off against any such amount or payment any cross-claim whether liquidated or unliquidated for any sum or sums for which the Seller does not admit liability.

8.6 The Seller reserves the right to refuse to execute any Order or Contract if the arrangements for payment or the credit of the Buyer appear to be or become unsatisfactory or if the Buyer fails to fulfil his obligations under the Contract.

8.7 The Buyer may request the return of any non-faulty Goods, spare parts and/or consumables which must be in the original packaging. Any such return shall be at the sole discretion of the Seller and returned within 30 days of delivery and shall be subject to a restocking fee equivalent to 20% of the total Contract price.

9. TITLE AND RISK

9.1 Title to the Goods shall remain vested in the Seller until the purchase price and all other monies (including any accrued interest at the rate specified in Condition 8.4) owed by the Buyer in relation to those Goods or Services or any other goods or services supplied by the Seller to the Buyer are paid in full.

9.2 Pending payments such Goods shall be kept separate and readily identifiable and insured for their full value by the Buyer. The Buyer shall not attach the Goods to real property without the Seller's prior consent The Buyer hereby grants the Seller a licence to enter upon any of the Buyer's premises to repossess such Goods.

9.3 Where property in any such Goods has not passed the Seller may nevertheless maintain an action against the Buyer for the purchase price and all other monies owing by the Buyer in relation to the Goods (notwithstanding Section 49 Sale of Goods Act 1979).

9.4 Unless agreed between the parties to the contrary, delivery shall be FCA Incoterms 2010.

9.5 Risk for the Goods shall be borne by the Buyer as from delivery of the Goods.

9.6 If dispatch and/or delivery is delayed at the request of the Buyer or for any other reason(s) not attributable to the Seller the risk shall transfer to the Buyer at the original stipulated time for delivery of the Goods and shall be warehoused and insured at the expense and risk of the Buyer.

9.7 Any resale by the Buyer of Goods in which property has not passed to the Buyer shall (as between the Seller and the Buyer only) be made by the Buyer as agent for the Seller.

9.8 At any time before title to the Goods passes to the Buyer (whether or not any payment to the Seller is then overdue or the Buyer is otherwise in breach of any obligation to the Seller), the Seller may (without prejudice to any other of its rights):

9.8.1 retake possession of all or any part of the Goods and enter any premises for that purpose (or authorise others to do so) which the Buyer hereby authorises;

9.8.2 require delivery up to it of all or any part of the Goods.

10. IMPROVEMENTS

The policy of the Seller is one of continuous technical improvement and the Seller therefore reserves the right from time to time to review, modify or vary the technical specifications and designs of any Goods provided the quality and finish of the goods as delivered shall be at least equal to that of the Goods contracted for.

11. TESTS

11.1 Unless mentioned in the Seller's quotation or official acknowledgement to the contrary, the Goods will be subject to the Seller's standard geometric and practical tests (where applicable) using the Seller's regular equipment prior to the delivery. Any other tests required must be arranged in good time before the due delivery date, and may be chargeable according to their nature and duration.

11.2 If previously agreed, Goods (standard or special) supplied with tooling will be tested at the place of manufacture prior to delivery, using components (or suitable material) supplied by the Buyer on the operation/s which they are to perform. In such cases a charge for these tests will either be included in tooling prices or stated separately in the Seller's quotation.

11.3 Test pieces, components or work material supplied by the Buyer to enable tests to be completed must be in a condition suited to the requirements of the operation concerned. In the event that the Seller finds it necessary to incur costs in ensuring that this Condition has been complied with then such will be charged to the Buyer.

11.4 Immediately after installation of the Goods by the Seller, and before the Buyer is entitled to use the Goods, the Buyer shall sign and return to the Seller the 'Project Completion and Outstanding Items Notification' ("PCOIN") document. The PCOIN document shall:

11.4.1 confirm that the Goods have been fully and successfully delivered and installed by the Seller; and

11.4.2 specify any items which remain outstanding

11.5 The Buyer shall as soon as practicable, but in any event by no later than 30 calendar days of the date of completed installation of the Goods, carry out full production testing of the installed Goods to ensure the full, complete and correct operation of all functions and applications of the Goods. In the event of any alleged defect or failure of the Goods, the Seller shall deliver to the Seller a detailed written report (together with all relevant supporting evidence) specifying the alleged defect or failure.

11.6 Subject to any alleged issues raised in accordance with Clause 11.5 above, the Goods shall be deemed free from any defect(s) and/or fit for purpose and capable of performance in accordance with specifications set out in the initial agreement/quote save to the extent that any such defect or failure (if any) could not reasonably be expected to have been discovered at the time of testing.

11.7 Notwithstanding Clauses 11.4 and 11.5 above, the Buyer will be deemed to have accepted:

delivery and installation of the Goods; and/or

that the Goods are free from any defect(s) and/or are fit for purpose and capable of performance in accordance with the specifications set out in the initial agreement/quote, if

11.7.1 the Buyer has failed (or refuses) to sign and return the PCOIN document to the Seller as required under Clause 11.4; and/or

11.7.2 the Buyer has failed (or refuses) to carry out the testing as required under Clause 11.5.

12. CONFIDENTIAL INFORMATION

All technical data, drawings, reports, documents and information whatsoever which the Seller submits to the Buyer in connection with the Contract (and the copyright therein) shall remain the Seller's property and must not be copied or shown to any third party without the Seller's express consent being obtained in advance and in any event upon the condition of a similar condition being imposed upon any third party.

13. INTELLECTUAL PROPERTY

13.1 If at any time it is alleged that the Goods or Services infringe the rights of any third party or if in the Seller's reasonable opinion such an allegation is likely to be made, the Seller may at its option and its own cost:

13.1.1 modify or replace the Goods or re-perform the Services in order to avoid the infringement; or

13.1.2 procure for the Buyer the right to continue using the Goods or benefit from the Services; or

13.1.3 repurchase the Goods at the price paid by the Buyer less depreciation at the rate the Seller applies to its own equipment.

13.2 If any claim is made or action brought or threatened which alleges infringement of the rights of any third party:

13.2.1 the Buyer shall notify the Seller as soon as it becomes aware of any such claim;

13.2.2 the Seller may (at its option) have control over and shall conduct any such proceedings in such manner as it shall determine; and the Buyer shall provide all reasonable assistance as the Seller may reasonably request.

13.3 The Buyer shall indemnify the Seller against all loss, liability and cost which the Seller incurs in carrying out any work required to be done on or to the Goods or in relation to the Services in accordance with the Buyer's requirements or specifications which give rise to any infringement or alleged infringement of the rights of any third party.

14. LICENSES AND CONSENTS

14.1 If a licence or consent of any government or other authority is required for the supply, carriage or use of the Goods or Services by the Buyer, the Buyer will obtain such licence or consent at its own expense and produce evidence of it to the Seller on demand.

14.2 The Buyer is not entitled to withhold or delay payment of the price if it fails to obtain any licence or consent, and will pay any additional costs or expenses incurred by the Seller as a result of such failure.

15. FORCE MAJEURE

If the Seller is prevented, hindered or delayed from making delivery of any Goods or from performing any Services by reason of act of God, war, hostilities, civil disturbance, governmental restriction or regulation of any kind, strikes or industrial disputes, force majeure or any other cause of whatsoever nature beyond the Seller's control the Seller may give notice in writing to the Buyer either:

15.1 terminate the Contract forthwith; or

15.2 suspend delivery or performance while the force majeure circumstances continue,

and the Seller shall not be liable for any loss or damage suffered by the Buyer as a result of such termination or suspension.

16. BUYER'S DELAY - CANCELLATION

If the Seller is prevented, hindered or delayed from making delivery of any goods or performing any services by reason of delay on the part of the Buyer providing information to the Seller in order to enable the Seller to complete its obligations or if the Buyer does not take delivery or cancels, determines or rescinds the contract then in no event shall the Seller be liable for any loss or damage whatsoever arising out of any such circumstances and the Seller may (on giving notice to the Buyer) regard the contract as completed in its then partial state of completion in which case the Seller will:

16.1 stop all work as promptly as reasonably possible;

16.2 retain any deposit paid by the Buyer to the Seller; and

16.3 store all finished goods for 14 days and at the end of such period sell all finished and unfinished goods in mitigation of the Seller's losses

16.4 Save in cases of cancellation, determination or recision reinstate the contract at the earliest practical date subject to the Buyer agreeing prices and terms.

17. **HEALTH AND SAFETY**

17.1 The Buyer will take any steps specified by the Supplier from time to time to ensure that the Goods will be safe and without risks to health at all times when they are being stored, used, cleaned or maintained by any person at work, or when they are being dismantled or disposed of, including but not limited to implementing the correct safety functions and settings of the Goods (including machines and systems) as outlined in the machine manuals and operating guides. The Seller will not require the Buyer to take any steps that are inconsistent with clause 17.2 below

17.2 The Buyer expressly acknowledges the fact that due to safety and quality reasons mounting and dismounting of components as well as any repair and maintenance work of the Goods (including machines and systems) and Service delivered by the Seller should exclusively be performed by either employees of the Seller (including related group companies) or by third parties' representatives expressly authorised by the Seller to perform such work. The Seller (including related group companies) reserves the right to withhold performance of such services to the extent that the Buyer has not taken any of the steps specified by the Supplier from time to time in accordance with clause 17.1 above.

17.3 The Buyer expressly acknowledges that the provisions in clause 17.2 above are consistent with the obligations of the Supplier pursuant to the Health and Safety at Work Act 1974, The Management of Health and Safety at Work Regulations 1999 and The Supply of Machinery (Safety) Regulations 2008

18. WARRANTIES

18.1 The Seller warrants that the Goods and/or Services shall, for the periods set out in Condition 18.3 comply with their specification and be substantially free from defects in materials and workmanship.

18.2 The warranties in Condition 18.1 are given on the following conditions:

18.2.1 the Goods or Services have been used in a proper and workmanlike manner for the purpose and not beyond the capacity indicated (including strict adherence to routine maintenance and standard operating procedures recommended by the Seller);

18.2.2 the Goods and Services have been programmed, operated and maintained only by employees of the customer who have successfully completed any training course offered by the seller or by employees of the Seller (including related group companies) or by third parties' representatives expressly authorised by the Seller to perform such work. The warranty in clause 18.1 shall specifically not apply to any damage caused by chemical or electrolytic agents, building works or assembly not carried out by the Seller (including related group companies) or by third party representatives expressly authorised by the Seller to perform such work (in particular, but not limited to, work involving changes) or for any other reasons not attributable to the Seller.

18.2.3 any claim is notified in writing to the Seller within 7 days of the date of discovery of the relevant defect.

18.3 The periods referred to on Condition 18.1 are:

18.3.1 in the case of any computer programme or programming manual, within 3 months of delivery;

18.3.2 in the case of Services, within 3 months of practical completion;

18.3.3 in the case of spare parts or consumables, within 3 months of delivery or if shorter within the warranty available to the Seller from his supplier;

18.3.4 in all other cases within 12 months of delivery, or if shorter (and where relevant) within 2000 operating hours, where delivery is delayed for reasons not attributable to the Seller the warranty shall end no later than 15 months following the notification of readiness for dispatch.

18.4 If the Buyer makes a valid claim under the warranty given in Condition 18.1, the Seller shall (at its election) either refund the purchase price or repair or replace free of charge the defective Goods or re-execute free of charge the defective Services.

18.5 Except as set out in this Condition 18, all conditions, warranties and representations expressed or implied by statute, common law or otherwise in relation to the supply, use of or failure to supply the Goods or the performance or non-performance of the Services are excluded to the extent permitted by law.

19. SUB-SALE

The Buyer undertakes that the Goods will not be sold or distributed or otherwise in any way dealt with unless there shall first have been applied all such protective or other packaging, and all such warnings, notices, statements or markings, and all such other precautions of whatsoever nature as may be required by the Seller (which includes (without prejudice to the generality of the foregoing) any instructional and technical literature and any warranty card supplied by the Seller) or by the law of any place where the goods may at any time be or as may be necessary or appropriate to preclude the making of any claim by any person who may use or be affected by the Goods on the grounds of the absence thereof. The Buyer shall indemnify the Seller against all claims, proceedings, costs or expenses which the Seller may sustain by reason of any breach of this undertaking.

20. LIMITATION OF LIABILITY

20.1 Nothing in these Conditions shall apply to exclude or restrict any liability which under sub sections 2(1) and 6(1) of the Unfair Contract Terms Act 1977 cannot in the relevant circumstances be excluded or restricted. Nothing in these conditions shall exclude or restrict liability for death or personal injury as a result of negligence of the other party.

20.2 Where loss or damage arises from breach of contract, negligence or otherwise neither the Seller nor its employees or agents (on whose behalf the Seller Contracts for this purpose) shall be under any liability to the Buyer or to third parties:

20.2.1 for any loss or damage incurred by the Buyer as a result of third party claims, for any loss of profits, loss of sales or business, loss of anticipated savings, loss of agreements or contracts, loss of use or corruption of software, data or information, loss of goodwill or any indirect, special or consequential loss or damage howsoever caused;

20.2.2 to any extent greater or other than 10% of sums paid in relation to the applicable Order under which the liability arose;

20.2.3 for any loss or damage incurred by the Buyer as a result of any work carried out otherwise than in accordance with clause 18.1.

20.3 The Buyer shall indemnify the Seller and its employees and agents (on whose behalf the Seller Contracts for this purpose) against all third party claims relating in any way to Goods or Services supplied by the Seller or arising from breach of or negligence in connection with the Contract to the extent that there are no proceeds of the Seller's public and product liability insurance available (after meeting any liability to the Buyer covered thereby) for such claims.

20.4 Without prejudice to the generality of the foregoing no forecast estimate statement or other data (whether supplied by the Seller or a third party) with regard to the performance or productivity of the Goods is (except in so far as it is expressly agreed in writing by the Seller as being warranted guaranteed or warranted by the Seller which shall be under no liability or obligation whatsoever with regard thereto.

20.5 When the Seller supplies Goods or Services for the Buyer, to the Buyer's special requirements or for the Buyer's special purpose (whether or not incorporated in whole or in part in the Seller's own specifications) the Seller shall have no liability for any defects derived wholly or partly from any specifications given by the Buyer or on its behalf and the Buyer shall indemnify the Seller against all claims arising from the Seller complying with the Buyer's requirements or purpose.

20.6 The Buyer shall procure that Goods supplied by the Seller shall only be used in conjunction with comprehensive monitoring, measuring, maintenance, checking and inspection procedures under which all items produced using such Goods are fully tested for compliance with specification before being processed, used or delivered and that upon any deviation being shown by any such test all proper remedial action is forthwith taken. Any liability which could reasonably have been avoided but for a breach of this paragraph is hereby excluded.

20.7 The Seller's pricing structure is based upon the limitations of liabilities and indemnities contained in these Conditions and the Buyer is advised to consider itself obtaining insurance cover for any claims for which the Seller is (pursuant to this Condition or otherwise) not liable and for any indemnity liability which may arise thereunder.

20.8 Limitation of "Evergreen" warranty claims. The Buyer understands that when buying goods the Seller has an obligation to repair or replace defects that arise during the warranty period of the goods in question. The Seller is unable to continuously apply new warranty on a recurring basis for new parts fitted, effectively an Evergreen warranty. The initial warranty period shall be the baseline for claims. After the initial warranty period expires any replacement parts/goods shall be chargeable.

21. TERMINATION

21.1 On or at any time after the occurrence of any of the events in Condition 20.2, the Seller may:

21.1.1 stop any Goods in transit;

21.1.2 suspend further deliveries of the Goods or performance of the Services;

21.1.3 exercise its rights under Condition 9;

21.1.4 terminate the Contract forthwith by giving notice to that effect to the Buyer.

21.2 The events are:

21.2.1 the Buyer being in breach of any obligation under the Contract;

21.2.2 a meeting being convened, a petition presented, an order made, an effective resolution passed, or notice given for the Buyer's winding up or dissolution (other than for the sole purpose of amalgamation and reconstruction);

21.2.3 an application being made, or resolved to be made by any meeting of the Buyer's directors or members, for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator being appointed;

21.2.4 an incumbrancer taking possession, or a receiver or manager or administrative receiver being appointed, of the whole or any part of the Buyer's assets;

21.2.5 the Buyer ceasing or suspending payment of any of its debts or being unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986; or

21.2.6 a proposal being made for a composition in satisfaction of the Buyer's debts or a scheme or arrangement of its affairs including a voluntary arrangement within the meaning of part I of the Insolvency Act 1986.

21.3 On termination of the Contract pursuant to Condition 21.1.4 or 15.1, any indebtedness of the Buyer to the Seller shall become immediately due and payable and the Seller is relieved of any further obligation to supply Goods or perform Services pursuant to the Contract.

22. THIRD PARTY FINANCE

Where the Buyer is buying Goods and/or Services pursuant to a lease purchase or other finance arrangement entered into between the Buyer and a third party, and unless agreed otherwise, the Buyer shall purchase the goods and Services subject to any dealings between the Seller and that third party (including, without limitation, the Sales Order Confirmation) as if such dealings had been conducted between the Seller and the Buyer.

23. ASSIGNMENT The Buyer may not assign or deal in any way with all or part of the benefit of, or its rights or benefits under, a Contract without the prior written consent of the Seller. The Seller is entitled at any time to assign or deal with the benefit of any Contract, or subcontract any work relating to any Contract. GENERAL No term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it. The Contract shall be deemed to be made at Coventry, England, and shall be governed by English Law and the parties submit to the exclusive jurisdiction of the English Courts.

23.1 Any provision of these Conditions held by a court of law to be invalid shall be severable and shall to the extent necessary to prevent such invalidity be deemed to be omitted from these Conditions and any liability which would otherwise have been excluded or limited shall nevertheless be subject to the remaining provisions of these Conditions.

23.2 The provisions of these Conditions shall remain in full force and effect notwithstanding that the parties' obligations under the Contract may have been performed or discharged.

23.3 The waiver of any breach of any of these Conditions shall not prevent the subsequent enforcement of that Condition or the exercise of any right arising from that breach and shall not be deemed a waiver of any subsequent breach.