



## STANDARD TERMS & CONDITIONS OF SUPPLY

### 1 INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions:

“Buyer” means the person, firm or company who purchases the Goods from OMS;

“Contract” means the Buyer’s order (whether written or verbal) and OMS’s acceptance of it in accordance with clause 4.3;

“Goods” means the OMS Pipe Checker™ range of tools agreed in the Contract to be purchased by the Buyer from OMS (including any part or parts of it) together with the then current user guides, if any, that are provided by OMS for use with such tools, but excluding any software which the Buyer is responsible for procuring; and

“IPR” means patents, rights to inventions, copyright and related rights, trade marks, trade names, service marks, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

“OMS” means Optical Metrology Services Limited whose registered number is 5169556 and whose registered office is at Causeway House, 1 Dane Street, Bishop Stortford, Hertfordshire, CM23 3BT;

“VAT” means value added tax chargeable under English law for the time being and any similar additional tax.

1.2 In the Contract unless the context otherwise requires:

1.2.1 words importing (i) any gender include every gender, (ii) the singular number include the plural number and vice versa; and (iii) persons include firms, companies and corporations and vice versa;

1.2.2 headings to clauses will not affect the interpretation;

1.2.3 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and

1.2.4 any phrase introduced by the words "including", "includes" or similar, shall be construed as illustrative and without limitation to the generality of the related general words.

### 2 APPLICATION OF CONDITIONS

2.1 These conditions shall apply to and be incorporated in the Contract and prevail over any inconsistent terms or conditions contained in or referred to in the Buyer’s order, confirmation of order, or specification, or implied by law, trade custom, practice or course of

dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on OMS unless in writing and signed by a duly authorised representative of OMS.

2.3 The Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in the Contract.

### 3 OMS LIABILITY

3.1 The provisions of clause 3 set out the entire financial liability of OMS (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any breach of the Contract and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Contract.

3.2 Nothing in these terms and conditions excludes or limits the liability of OMS for death or personal injury caused by OMS’s negligence, fraud or fraudulent misrepresentation or any other liability which cannot be excluded or limited under applicable law.

3.3 Subject to clause 3.2, OMS’s maximum aggregate liability to the Buyer under or in connection with the Contract, or any collateral contract, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation (other than where made fraudulently), restitution or otherwise, shall be limited to 125% of the fees payable for the Goods under clause 9.

3.4 Subject to clauses 3.2 and 3.5, OMS shall not be liable to the Buyer under, or in connection with, the Contract or any collateral contract for:

3.4.1 any loss of profits, loss of contracts, loss of business, loss of use, loss of goodwill, opportunity or reputation, anticipated savings, wasted management time, loss of data (or labour expenses associated with restoring lost data or making the Goods operational) or similar losses; or

3.4.2 any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising even if OMS has been advised of the possibility of such damages.

3.5 In the event that any of the exclusions in clause 3.4 are found to be invalid, illegal or unenforceable by a court of competent jurisdiction, OMS’s aggregate liability for such shall be subject to the financial limit set out in clause 3.3.

3.6 Without prejudice to any other rights or remedies which OMS has, the Buyer shall fully indemnify and keep indemnified OMS against all losses, damages, costs, claims, demands, liabilities and expenses (including without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) awarded against or incurred by OMS in connection with or arising out of any breach of the Contract.

3.7 Subject to clause 3.2, OMS shall be discharged of liability in respect of any claim arising out of any transaction subject to these terms,



whether in contract, tort (including negligence) or otherwise, unless formal commencement of legal proceedings is brought within one year after the Buyer first becomes (or should reasonably have become) aware of the facts that constitute the cause of action.

#### 4 BASIS OF SUPPLY

- 4.1 Any quotation produced by OMS for the Goods is valid for a period of 30 days only, and OMS may withdraw such quotation at any time by notice to the Buyer.
- 4.2 Each order or acceptance of a quotation for the Goods by the Buyer shall be deemed to be an offer by the Buyer to purchase the Goods subject to these terms and conditions. The Buyer shall ensure that its order is complete and accurate.
- 4.3 A binding contract shall not come into existence between OMS and the Buyer unless and until OMS issues a written order acknowledgement to the Buyer or OMS delivers the Goods to the Buyer (whichever occurs earlier).
- 4.4 OMS may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the applicable Contract. Each instalment shall be a separate Contract and no cancellation or termination by either party of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment unless agreed otherwise by OMS in writing.
- 4.5 No order which has been acknowledged by OMS may be cancelled by the Buyer, except with the agreement in writing of OMS and provided that the Buyer indemnifies OMS in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by OMS as a result of cancellation.
- 4.6 The Buyer shall not, without the prior written consent of OMS, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. OMS may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

#### 5 QUANTITY AND DESCRIPTION

- 5.1 The quantity and description of the Goods shall be as set out in OMS's acknowledgement of order or (if there is no acknowledgment of order) quotation.
- 5.2 If OMS agrees to make adaptations to the Goods to meet the Buyer's requirements, OMS shall not be liable to the Buyer for any losses or damages incurred or suffered by the Buyer as a result of such adaptations. It is the Buyer's sole responsibility to ensure that its requirements and the adaptations it has asked OMS to make are complete and accurate. If OMS has made the adaptations in accordance with the Buyer's requirements and such requirements and/or adaptations are incomplete and/or incorrect, the Buyer shall still be under an obligation to pay OMS the fees for such adapted Goods.
- 5.3 All samples, drawings, descriptive matter, specifications and advertising issued by OMS, and any descriptions or illustrations

contained in OMS's catalogues, brochures or its website are issued or published for illustrative purposes only and they do not form part of the Contract.

- 5.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by OMS shall be subject to correction without any liability on the part of OMS.
- 5.5 OMS reserves the right (but does not assume the obligation) to make any changes in the specification of the Goods which are required to conform with any applicable legislation or, where the Goods are to be supplied to the Buyer's specification, which do not materially affect their quality or performance.
- 5.6 OMS's employees, contractors and agents are not authorised to make any contractually binding representations concerning the Goods. In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing and signed by an authorised officer of OMS. However, nothing in these terms and conditions limits or excludes OMS's liability for fraudulent misrepresentation.
- 5.7 Any advice or recommendation given by OMS or its employees, contractors or agents to the Buyer or its employees, contractors or agents about the storage, application or use of the Goods which is not confirmed in writing by an authorised officer of OMS which is followed or acted on entirely at the Buyer's own risk.

#### 6 DELIVERY AND ACCEPTANCE

- 6.1 OMS shall use its reasonable endeavours to deliver the Goods on the date or dates specified in OMS's acknowledgement of order, but any such date is approximate only. If no dates are so specified or there is no acknowledgement of order, delivery shall be within a reasonable time of acceptance of the order. Time is not of the essence as to the delivery of the Goods and OMS is not liable for any delay in delivery, however caused.
- 6.2 The Goods may be delivered by OMS in advance of the quoted delivery date on giving reasonable notice to the Buyer.
- 6.3 Delivery shall be made during OMS's normal business hours (excluding bank or public holidays). OMS may levy additional charges for any deliveries made outside such hours at the Buyer's request.
- 6.4 The Buyer shall be responsible (at the Buyer's cost) for preparing the delivery location for the delivery of the Goods and all necessary access and facilities required to deliver the Goods. If OMS is prevented from carrying out delivery on the specified date because no such preparation has been carried out, OMS may levy additional charges to recover its loss arising from this event.
- 6.5 The Buyer shall be deemed to have accepted the Goods when the Buyer has had 5 days to inspect it after delivery and has not exercised in writing its right of rejection in accordance with clause 8.
- 6.6 OMS shall be responsible for any damage, shortage or loss in transit, provided that the Buyer notifies it to OMS (or its carrier, if applicable) within 5 days of delivery or the proposed delivery date of the Goods and that the Goods have been handled in accordance with OMS's



stipulations. Any remedy under this clause shall be limited, at the option of OMS, to the replacement or repair of any Goods which is proven to OMS's satisfaction to have been lost or damaged in transit.

hold the proceeds of such insurance on trust for OMS and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

6.7 OMS reserves the right to defer the date of delivery, or to cancel the Contract or reduce the amount of the Goods ordered, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of OMS or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

6.8 OMS shall not be liable for any non-delivery of the Goods (even if caused by OMS's negligence) unless the Buyer notifies OMS in writing of the failure to deliver within 10 days after the scheduled delivery date.

6.9 Any liability of OMS for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Goods.

6.10 If OMS's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Buyer (other than by reason of a force majeure event under clause 6.7), the Buyer shall be liable to pay to OMS all reasonable costs, charges or losses sustained by it as a result, subject to OMS notifying the Buyer in writing of any such claim it might have against the Buyer in this respect.

**7 RISK AND PROPERTY**

7.1 The Goods shall be at the risk of OMS until delivery to the Buyer at the agreed place of delivery. OMS shall off-load the Goods at the Buyer's risk.

7.2 Ownership of the Goods shall pass to the Buyer on the later of completion of delivery (including off-loading), or when OMS has received in full in cleared funds all sums due to it in respect of the Goods and all other sums which are or which become due to OMS from the Buyer on any account.

7.3 Until ownership of the Goods has passed to the Buyer under clause 7.2, the Buyer shall:

- 7.3.1 hold the Goods on a fiduciary basis as OMS's bailee;
- 7.3.2 store the Goods (at no cost to OMS) in satisfactory conditions and separately from all the Buyer's other equipment or that of a third party, so that it remains readily identifiable as OMS's property;
- 7.3.3 not change, remove, destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 7.3.4 keep the Goods insured on OMS's behalf for its full fee against all risks to the reasonable satisfaction of OMS, and

7.4 The Buyer's right to possession of the Goods before ownership has passed to it shall terminate immediately if any of the circumstances set out in clause 13 arise or if the Buyer encumbers or in any way charges the Goods, or if the Buyer fails to make any payment to OMS on the due date.

7.5 The Buyer grants OMS, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or where the Buyer's right to possession has terminated, to remove them. All costs incurred by OMS in repossessing the Goods shall be borne by the Buyer.

7.6 On termination of the Contract for any reason, OMS's (but not the Buyer's) rights in clause 7 shall remain in effect.

7.7 OMS may appropriate payments by the Buyer to such Goods as it thinks fit, notwithstanding any purported appropriation by the Buyer to the contrary, and may make such appropriation at any time.

**8 LIMITED WARRANTY**

8.1 Subject to clauses 8.5 to 8.8 (inclusive), OMS warrants to the Buyer that (subject to the other provisions of these terms and conditions) on delivery, and for a period of 12 months from the date of delivery, the Goods shall:

- 8.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and;
- 8.1.2 be reasonably fit for the purpose as described in the OMS literature for the Goods.

8.2 Subject to clauses 8.5 to 8.8 (inclusive), if any of the Goods do not conform with any of the warranties in clause 8.1 OMS shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if OMS so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to OMS. If the Buyer's claim is subsequently found by OMS to be outside the scope or duration of the warranties in clause 8.1, the costs of transportation of the Goods, investigation and repair shall be borne by the Buyer.

8.3 If OMS complies with clause 8.2 it shall have no further liability for a breach of any of the warranties in clause 8.1 in respect of such Goods.

8.4 Any Goods replaced shall belong to OMS and any repaired or replacement Goods shall be under warranty on these terms and conditions for the unexpired portion of the 12 month period.

8.5 OMS shall not be liable for a breach of any of the warranties contained in clause 8.1 unless:

- 8.5.1 the Buyer gives written notice of the defect to OMS within 10 days of the time when the Buyer discovers or ought to have discovered the defect; and



8.5.2 OMS is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by OMS) returns such Goods to OMS's place of business at the Buyer's cost for the examination to take place there.

quoted (or a quoted price is no longer valid), the fees listed in OMS's price list current at the date of acceptance of the order. OMS's published export fee list shall apply to exports of the Goods as appropriate.

8.6 OMS shall further not be liable for a breach of any of the warranties in clause 8.1 if:

8.6.1 the Buyer makes any use of the Goods in respect of which it has given written notice under clause 8.5.1; or

8.6.2 the defect arises because the Buyer failed to follow OMS's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

8.6.3 the Buyer alters, modifies or repairs the relevant the Goods without the prior written consent of OMS.

8.7 OMS shall not be liable for any damage or defect to the Goods caused by improper use of the Goods or use of the Goods outside its normal application. Subject to payment by the Buyer of any additional OMS fees, OMS may agree to repair any damage or defect caused by improper use of the Goods or use of the Goods outside its normal application.

8.8 The warranty in clause 8.1 shall not apply to any part of the Goods which are manufactured by a third party. As far as it is able, OMS will pass on to the Buyer the benefits of any third party manufacturer's warranties.

8.9 These terms and conditions set out the full extent of OMS's obligations and liabilities in respect of the supply of the Goods. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on OMS except as specifically stated in these terms and conditions. Any condition, warranty, representation or other term concerning the supply of the Goods which might otherwise be implied into, or incorporated in, these terms and conditions, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.

## 9 FEES

9.1 The fees for the Goods:

9.1.1 shall be as stated in OMS's acknowledgement of order or (if there is no acknowledgment of order) quotation. All fees are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties;

9.1.2 are based on the fees prevailing at the date of OMS's acknowledgement of the order or (if there is no acknowledgment of order) quotation and OMS may increase the fees to cover any increases due to market conditions (including, but not limited to, increases in foreign exchange rates relating to the Goods, or in labour, materials, supply or transportation costs) which affect OMS at the date of delivery; and

9.1.3 shall be OMS's quoted price or, where no price has been

9.2 OMS reserves the right, by giving notice to the Buyer at any time before delivery, to increase the fees for the Goods which have not been delivered to reflect any increase in the cost to OMS which is due to any factor beyond the control of OMS (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which are requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give OMS adequate information or instructions.

## 10 PAYMENT TERMS

10.1 Subject to any special terms agreed in writing between the Buyer and OMS, OMS may invoice the Buyer for the fees for the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods. In either case, OMS shall be entitled to invoice the Buyer for the fees at any time after OMS has notified the Buyer that the Goods are ready for collection.

10.2 The terms of payment shall be within 30 days of the date of OMS's invoice, whether or not delivery has taken place or (if applicable) title in the Goods have passed to the Buyer.

10.3 The Buyer shall pay the fees for the Goods in pounds sterling unless agreed otherwise by OMS. If an invoice is issued in any other currency the exchange rate which OMS shall apply to such invoice shall be based on the exchange rate in force on the day of payment or, if payment is delayed, the payment due date if the exchange rate is more favourable to OMS. Time for payment of the fees shall be of the essence of the Contract.

10.4 If the Buyer fails to make payment in full on the due date, the whole of the balance of the fees for the Goods then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to OMS, OMS may:

10.4.1 terminate the Contract or suspend any further deliveries of the Goods (whether ordered under the same contract or not) to the Buyer; and/or

10.4.2 appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and OMS) as it thinks fit (despite any purported appropriation by the Buyer); and/or

10.4.3 charge interest on the amount outstanding from the due date to the date of receipt by OMS (whether or not after judgment) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998; and/or

10.4.4 suspend all further manufacture, delivery or warranty service until payment has been made in full; and/or

10.4.5 make a storage charge for any undelivered Goods at its



current rates from time to time; and/or

10.4.6 stop any Goods in transit; and/or

10.4.7 make a general lien on all Goods and property belonging to the Buyer, exercisable in respect of all sums lawfully due from the Buyer to OMS. OMS shall be entitled, on the expiry of 90 days' notice in writing, to dispose of such Goods or property in such manner and at such fee as it thinks fit and to apply the proceeds towards the amount outstanding.

10.5 All sums payable to OMS under the Contract shall become due immediately on its termination, despite any other provision of the Contract. This clause is without prejudice to any right to claim for interest under the law, or any right under the Contract.

10.6 OMS may, without prejudice to any other rights or remedies it may have, set off any liability of the Buyer to OMS against any liability of OMS to the Buyer.

## 11 EXPORT TERMS

11.1 Where the Goods are supplied for export from the UK, the provisions of clause 11 shall (subject to any contrary terms agreed in writing between the Buyer and OMS) override any other conflicting or inconsistent provision of these terms and conditions (but only to the extent of such conflict or inconsistency).

11.2 The Buyer shall be responsible for complying with any legislation governing the importation of the Goods into the country of destination and the export and re-export of the Goods, and in both cases shall be responsible for the payment of any duties on it.

11.3 Unless otherwise agreed in writing between the Buyer and OMS, the Goods shall be delivered free on board the air or sea port of shipment and OMS shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

11.4 OMS shall be responsible for arranging for the testing and inspection of the Goods at OMS's premises before shipment.

## 12 INTELLECTUAL PROPERTY RIGHTS

12.1 If OMS manufactures the Goods, or applies any process to it, in accordance with a specification submitted or prepared by the Buyer or any other information provided by the Buyer, the Buyer shall fully indemnify and keep indemnified OMS against all losses, damages, costs, claims, demands, liabilities and expenses (including without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) awarded against or incurred by OMS in connection with, or paid or agreed to be paid by OMS in settlement of, any claim for infringement of any third party IPR which results from OMS's use of the Buyer's specification or such other information. The indemnity shall apply whether or not the Buyer has been negligent or at fault and does not limit any further compensation rights of OMS.

12.2 The Buyer acknowledges that all IPR used by or subsisting in the Goods are and shall remain the sole property of OMS or (as the case may be) the third party rights owner.

12.3 OMS shall retain the property and copyright in all documents supplied to the Buyer in connection with the Contract and it shall be a condition of such supply that the contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without the prior written consent of OMS.

12.4 OMS's (or its third party licensors) IPR in and relating to the Goods shall remain the exclusive property of OMS (or its third party licensors), and the Buyer shall not at any time make any unauthorised use of such IPR, nor authorise or permit any of its employees, agents, contractors or any other person to do so.

12.5 The Buyer shall keep in strict confidence all IPR, technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Buyer by OMS or its agents, and any other confidential information concerning OMS's business or its products (including the Goods) which the Buyer may obtain. The Buyer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Buyer's obligations to OMS, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Buyer.

12.6 All materials, equipment and tools, drawings, specifications and data supplied by OMS to the Buyer shall at all times be and remain the exclusive property of OMS, but shall be held by the Buyer in safe custody at its own risk and maintained and kept in good condition by the Buyer until returned to OMS, and shall not be disposed of or used other than in accordance with OMS's written instructions or authorisation.

12.7 The Buyer acknowledges that OMS may give access to or disclose personal data to its third party providers/licensors in connection with the performance of the Contract and the Buyer consents to such disclosure and confirms it has obtained all necessary consents of data subjects to such disclosure and use.

12.8 The Buyer shall not issue or make any public announcement or disclose any information regarding the Contract unless prior written consent has been obtained from OMS.

## 13 TERMINATION

13.1 Without prejudice to any other right or remedy available to OMS, OMS may terminate the Contract, suspend or terminate any further deliveries under the Contract without liability to the Buyer and, if the Goods have been delivered but not paid for, the fees shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary if:

13.1.1 the Buyer commits any material breach (including failure to make payment in accordance with the Contract) or persistent breach of any term of the Contract and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from OMS to do so, to remedy the breach (such request to contain a warning of OMS's intention to terminate); or

13.1.2 the ability of the Buyer to accept delivery of the Goods are delayed, hindered or prevented by circumstances beyond the Buyer's reasonable control; or





- 13.1.3 an order is made or a resolution is passed for the winding up of the Buyer, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the Buyer; or
- 13.1.4 an order is made for the appointment of an administrator to manage the affairs, business and property of the Buyer, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Buyer, or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- 13.1.5 a receiver is appointed of any of the Buyer's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Buyer, or if any other person takes possession of or sells the Buyer's assets; or
- 13.1.6 the Buyer makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
- 13.1.7 the Buyer ceases, or threatens to cease, to trade; or
- 13.1.8 the Buyer takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

13.2 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination. Clauses 3, 9, 10, 12 and 14 shall survive termination.

#### 14 GENERAL

- 14.1 Any notice required to be given pursuant to the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the address of the Buyer (as set out in the acknowledgement of order or (if there is no acknowledgement of order) quotation) and of OMS as set out in these terms and conditions, or such other address as may be notified by one party to the other.
- 14.2 A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 14.3 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions. If a provision of the Contract that is fundamental to the accomplishment of the purpose of the Contract is held to any extent to be invalid, OMS and the Buyer shall immediately commence good faith negotiations to remedy that invalidity.
- 14.4 Each of the parties acknowledge and agree that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in

writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract other than as expressly set out in the Contract.

14.5 The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended for the benefit of, and shall not be enforceable by, any person who is not named at the date of the Contract as a party to it, or any person who claims rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise and neither party can declare itself a trustee of the rights under it for the benefit of any third party.

14.6 The Contract and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract.