



## **Standard Terms and Conditions of Sale**

### **1. CONTRACT FORMATION**

1.1 The Effective Date of the Agreement will be the date of the Acknowledgement.

1.2 For the purpose of clause 1.1, an Acknowledgement delivered by e-mail, facsimile or via the Ordering Portal shall be deemed to have been received by the Buyer.

1.3 A Quotation or similar communication by Kaby is not an offer to sell or supply goods or services, unless it is in writing, described as an offer and signed on behalf of Kaby.

1.4 Unless previously withdrawn or expressly stated otherwise in writing by Kaby, all Quotations are subject to change at any time and Kaby cannot confirm the Price until a purchase order has been placed by the Buyer. If the Price of the Goods and/or Service at the date of receipt of a purchase order is higher than the Price stated in the Quotation, Kaby will, at its discretion, contact the Buyer for its instructions on whether the Buyer will agree to amend the purchase order to reflect the revised Price or not accept the Buyer's purchase order. If no adjustment to the Price set out in the Quotation is required, the purchase order shall be deemed capable of acceptance by Kaby and, at its discretion, Kaby may issue an Acknowledgement in respect of such purchase order.

1.5 No purchase order shall be binding until expressly accepted by Kaby pursuant to a corresponding Acknowledgement.

1.6 The supply of Deliverables by Kaby to the Buyer will be subject only to the terms of this Agreement, to the exclusion of any terms which the Buyer purports to apply, whether in a purchase order or otherwise, which are hereby rejected or (as appropriate) shall be excluded from the Agreement.

### **2. PROMOTIONAL MATERIALS**

Any prices, charges, samples, drawings, descriptions, catalogues or brochures or advertising of or relating to goods and issued or published by Kaby, ("Promotional Material"), do not form part of the Agreement or any other contract of sale of the Goods or Services between Kaby and the Buyer, or any collateral contract.

### **3. KABY'S OBLIGATIONS**

3.1 Kaby shall deliver the Goods and/or perform any Services in accordance with the terms of the Agreement.

3.2 Kaby shall use commercially reasonable efforts to meet any dates specified in the Acknowledgement but any such dates shall be estimates only and time for performance by Kaby shall not be of the essence of this Agreement. Kaby reserves the right to vary the delivery date if

completing the Order would result in Kaby exceeding any quotas imposed on the United Kingdom following its withdrawal from the European Union.

#### **4. BUYER'S OBLIGATIONS**

##### **4.1 The Buyer shall:**

4.1.1 comply with the Handling Instructions;

4.1.2 co-operate with Kaby and provide all reasonable assistance (including obtaining all work or other permits reasonably required for Kaby's employees or representatives in connection with the performance of the Services) required to achieve the objectives set out in the Acknowledgement, including providing all necessary access to premises to enable Kaby to satisfy its obligations under this Agreement;

4.1.3 provide, in a timely manner, such design, drawings, specifications, descriptions, materials, information, goods and equipment as Kaby may require and the Buyer warrants to Kaby that the use of the Buyer's Background IP and Buyer Materials will not infringe any third party's Intellectual Property Rights;

4.1.4 ensure that all information provided to Kaby as part of the Buyer Materials is accurate, complete and up to date;

4.1.5 obtain and maintain all necessary licences, consents and other rights necessary to comply with all relevant legislation in relation to the Deliverables; and

4.1.6 inform Kaby of all health and safety rules and regulations that apply at the Buyer's premises and are relevant to Kaby's supply of the Deliverables.

#### **5. PACKAGING AND DELIVERY**

5.1 Kaby shall package the Goods in accordance with good industry practice.

5.2 Delivery of the Goods shall be, unless otherwise agreed between the Parties, Incoterms EXW, as more specifically described in the Acknowledgement.

5.3 If, in accordance with clause 5.2, delivery of the Goods is Incoterm EXW or if, in accordance with the relevant Acknowledgement, delivery of the Goods is Incoterm FCA, and the Buyer does not collect the Goods within seven (7) days of the Delivery Date, Kaby shall be entitled to store the Goods at the Buyer's risk and expense.

#### **6. TESTING AND DEFECTIVE DELIVERABLES**

6.1 Kaby shall only carry out tests on the Deliverables which are specified in the Quotation (if any). Such tests and inspections shall take place under Kaby's standard testing arrangements, or under such other testing arrangements agreed in writing between the Parties.

##### **6.2 The Buyer shall:**

6.2.1 inspect and test the Goods within a reasonable period, not exceeding thirty (30) calendar days after delivery of the Goods against the requirements of clause 8.2 and notify Kaby of any shortfall in delivery and any defects revealed;

6.2.2 notify Kaby of any non-compliance of the Goods or non-compliance of the Services with the terms of this Agreement within a reasonable period, not exceeding thirty (30)

calendar days after the date of delivery of the Goods or performance of the relevant Services (as applicable).

6.3 In the absence of a notice from the Buyer in accordance with clause 6.2, Kaby is deemed to have complied with clauses 3.2, 8.2 and 8.5 on delivery of the Goods or performance of the Services (as applicable) and the Buyer shall be deemed to have accepted the Deliverables. The provisions of this clause 6.3 will not affect any remedies available to the Buyer under clause 6.4.

6.4 If the Buyer identifies a defect in the Deliverables as a result of any breach of clause 8.2 in respect of Goods or clause 8.5 in respect of Services, within a period of six months from the date of delivery or performance of the Deliverables (the "Warranty Period"), Kaby shall, at its sole discretion and subject to clause 6.5, rectify the defect by, either, repairing or replacing the defective Goods or re-performing defective Services as soon as reasonably practicable after notification of the defect by the Buyer. Where Kaby supplies any replacement Deliverables in accordance with this clause, the provisions of the Agreement shall apply to such replacement Deliverables.

6.5 If Kaby, having used commercially reasonable efforts, is unable to carry out the steps set forth in clause 6.4, then Kaby may:

6.5.1 cease performing any related Services, to the extent such Services cannot be performed pursuant to this Agreement as a result of the defective Goods or Services; and

6.5.2 reimburse the Buyer the Price paid for the affected Goods or Services.

6.6 The Parties acknowledge and agree that the remedies set forth in clauses 6.2 and 6.5 shall be the Buyer's sole and exclusive remedy for any defective Deliverables supplied by Kaby under this Agreement and Kaby shall have no further liability to the Buyer in respect of the failure of the Deliverables to comply with clause 8.2 or clause 8.5 (as applicable).

6.7 A claim in respect of a defect in accordance with this clause 6 shall not entitle Buyer to cancel or refuse delivery of or payment for any other order, delivery or instalment.

## **7. TRANSFER OF RISK AND TITLE**

7.1 Risk of damage to, or loss of, the Goods shall pass to the Buyer, in accordance with the Incoterms, on the Delivery Date.

7.2 Title to Goods shall not pass to the Buyer until Kaby has received payment in full for the Goods and all other sums due from the Buyer in accordance with the Agreement.

7.3 Where the Buyer takes delivery of or pays for Goods in instalments, title to such Goods shall pass to the Buyer on the payment of the final instalment.

7.4 Without prejudice to clause 7.7, until title to Goods has passed to the Buyer, the Buyer shall, hold such Goods as fiduciary bailee for Kaby; keep the Goods separate from any other goods and shall keep the Goods suitably marked or otherwise plainly identified that they are the property of Kaby; maintain such Goods in satisfactory condition and not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and insure the Goods on Kaby's behalf for their full price against all risks.

7.5 At any time prior to title passing to the Buyer, Kaby shall be permitted, and the Buyer shall procure the right for Kaby, its employees and representatives, to enter the Buyer's premises (or such other premises where the Goods are stored) and to remove such Goods.

7.6 If the Buyer sells or otherwise disposes of the Goods or makes any insurance claim in respect thereof, the proceeds of any such sale or any such insurance proceeds shall belong to Kaby and shall be held by the Buyer in trust for Kaby.

7.7 Prior to title in the Goods passing to the Buyer in accordance with this clause 7, the Buyer may, resell the Goods in the ordinary course of its business and pass good title to its customers; and incorporate the Goods into, mix the Goods with, or attach the Goods to, other goods.

## **8. WARRANTIES**

8.1 Each Party represents and undertakes that, it has the capacity and authority to enter into this Agreement; the persons entering into this Agreement on its behalf have been duly authorised to do so; and this Agreement and the obligations created hereunder are binding upon it and enforceable against it in accordance with their terms (subject to applicable principles of equity) and do not and will not violate the terms of any other agreement, or any judgment or court order, to which it is bound.

8.2 Subject to clauses 8.3 and 8.4 Kaby warrants to the Buyer that the Goods shall, in all material respects, be in accordance with the Specification and free from defects in design, workmanship or materials.

8.3 Kaby shall not be liable under clause 8.2 where a defect or non-conformance with the Specification arises from any or all of the following:

8.3.1 fair wear and tear;

8.3.2 award processing alteration or repair of the Goods (other than by Kaby);

8.3.3 abnormal working conditions;

8.3.4 failure to follow or to follow fully the Handling Instructions;

8.3.5 wilful damage, misuse or negligence.

8.4 Unless expressly set out under the Agreement, clause 8.2 does not extend to parts or equipment not manufactured by Kaby.

8.5 Kaby warrants to the Buyer that the Services shall, in all material respects, be in accordance with the Specification.

8.6 Except as expressly set out in this Agreement, all other conditions, warranties or other terms which might have effect between the Parties or be implied or incorporated into this Agreement, whether by statute, common law or otherwise, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care, are hereby excluded.

8.7 If the Buyer is purchasing goods or services from Kaby's standard price list, any technical requirements of the Buyer (whether contained in the Order or elsewhere) shall not form part of the Agreement unless expressly agreed in the Acknowledgement.

## **9. PRICE AND PAYMENT**

9.1 Unless expressed otherwise in the Agreement, all prices set out in the Agreement ("Price"), shall, subject to clause 10, remain fixed; are payable in the currency specified in the Quotation; and are exclusive of Value Added Tax or other applicable sales taxes.

9.2 Subject to clause 9.3, all payments due shall be paid by the Buyer within 30 days from the date of invoice. The Buyer shall pay Kaby interest on any overdue amounts in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 accruing on a daily basis until payment is made, after as well as before judgement.

9.3 If the Quotation states that payment is to be paid by letter of credit, such letter of credit must be an irrevocable letter of credit satisfactory to Kaby and confirmed by a United Kingdom bank acceptable to Kaby. The letter of credit shall be for the price payable for the Deliverables and shall be valid from the date of the Buyer's purchase order and shall not expire until six months after the date of completion of delivery or performance of the Deliverables. The letter of credit shall entitle Kaby to immediate cash payment on presentation to the relevant United Kingdom bank of the appropriate documentation.

9.4 If the Buyer disputes any invoices, the Buyer shall immediately notify Kaby in writing and the Parties shall use commercially reasonable efforts to resolve the dispute promptly. If the Parties have not resolved the dispute within 30 days of the Buyer giving notice to Kaby, the dispute shall be resolved in accordance with clause 19. Where only part of an invoice is disputed, the undisputed amount shall be paid by the due date.

9.5 If the Buyer fails to pay for any Deliverables in accordance with this clause 9 or if Kaby has reasonable concerns about the financial viability of the Buyer (whether in connection with an insolvency event or otherwise), Kaby may suspend further performance of the Services or supply of the Goods without liability until payment or satisfactory security for payment has been provided. If the Buyer fails to pay for any Deliverables under one Order, Kaby shall not be obliged to continue with the supply of other orders from the Buyer until payment has been made.

9.6 All sums payable by the Buyer shall be paid free and clear of all deductions or withholdings whatsoever, save only as may be required by law. If any deductions or withholding from sums due are required by law, the Buyer shall pay to Kaby such sum as will, after the deduction or withholding has been made, leave Kaby with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.

## **10. PRICE ADJUSTMENT**

10.1 The Price may be subject to adjustment by Kaby, to cover any additional costs or expenses incurred in the event of the suspension of work in accordance with clause 9.5; if the Buyer fails to comply with its obligations under clause 4; and upon reasonable notice to the Buyer, for any additional costs incurred by Kaby in respect of any material, fuel, power, transportation, labour or other costs, or tariffs, duties or taxes whatsoever which could not have reasonably been foreseen at the Effective Date.

10.2 The Price is calculated based on delivery being made Ex-Works (Incoterms) or such other Incoterm as is specified in the Agreement. If no Incoterm is specified in the Agreement, the Price excludes all costs of delivery, including transport, packaging, insurance and any taxes, duties and surcharges, all of which shall be payable by the Buyer in addition.

10.3 Where the price for the Goods is varied in accordance with this clause the price as varied shall be binding on both Parties and shall not give either Party any option of cancellation.

## **11. INTELLECTUAL PROPERTY RIGHTS**

11.1 The Background IP of a Party will remain the property of that Party.

11.2 Any Intellectual Property Rights created or developed by Kaby in the course of this Agreement will be owned by Kaby.

## **12. DATA PROTECTION**

12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. Without prejudice to the generality of Clause 12, the Buyer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Kaby for the duration and purposes of the Agreement.

## **13. CONFIDENTIALITY**

13.1 Each party undertakes that it shall not at any time during the Agreement, and for a period of five years after termination of the Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2.

13.2 Each party may disclose the other party's confidential information (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the agreement. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14; and (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Agreement.

## **14. BUYER'S LIABILITY**

14.1 Kaby shall be discharged from its obligations under this Agreement and shall not be liable for any damages, losses, costs, Claims or expenses sustained or incurred by the Buyer that arise directly or indirectly from or in connection with any of the following circumstances (each a "Buyer Default"):

14.1.1 the Buyer is in breach of this Agreement;

14.1.2 the responsibilities of the Buyer and the actions and events in relation to the performance by Kaby of its obligations in respect of the Deliverables which need to be performed or (as the case may be) to occur, or not to occur, in order for Kaby to perform its obligations are not met on time and in full, other than due to a breach by Kaby of this Agreement; or

14.1.3 Kaby's performance of its obligations under this Agreement is prevented, hindered or delayed by any act or omission of the Buyer, its agents, subcontractors, consultants or employees.

14.2 The Buyer will indemnify on an after tax basis, defend and hold harmless Kaby, its Affiliates and each of their respective officers, directors, employees, suppliers, successors and assigns (together the "Beneficiaries") on demand against any damages, costs, losses, expenses and Claims incurred by

the Beneficiaries (including any Claims from third parties) arising in relation to, or in connection with, any of the following:

14.2.1 Kaby's use of the buyer materials or specifications (including in relation to incorporation of buyer materials into the Goods or Services) whether as a result of any defects in materials, specifications or otherwise;

14.2.2 the incorrect incorporation, installation, assembly, use, processing, storage or handling of Goods by or on behalf of the Buyer;

14.2.3 any fines or other penalties imposed upon Kaby as a result of the Buyer's failure to comply with its obligations under clause 18.1.3 of these Standard Terms and Conditions of Sale;

14.2.4 the reliance by any third party on any information or advice which is provided by Kaby to the Buyer in relation to the Deliverables; and

14.2.5 a Buyer Default.

## **15. LIABILITY**

15.1 Neither Party shall be liable to the other under, or in connection with, this Agreement for any indirect or consequential losses (even if foreseeable or if such entity has been advised of the possibility of such losses being suffered). In no event will either Party be liable, whether arising from breach of contract, tort (including negligence), breach of statutory duty or otherwise for, loss of data; loss of anticipated savings or goodwill; or loss of business, contracts or any business interruption.

15.2 Kaby shall not be liable to the Buyer under or in connection with this Agreement for any loss of profits or loss of revenue, howsoever arising.

15.3 Kaby's total aggregate liability under this Agreement whether based on a Claim in contract, tort (including negligence), breach of statutory duty or otherwise arising out of, or in relation to, this Agreement, will be limited to the lesser of: (1) the Price paid or payable under this Agreement; or (2) one hundred thousand pounds sterling (£100,000).

15.4 Subject to the remainder of this clause 15 in the event of a valid termination of the Agreement by the Buyer as a result of a failure by Kaby to deliver the Goods or perform the Services:

15.4.1 in relation to a failure by Kaby to deliver the Goods, Kaby's liability shall be limited to the price incurred by the Buyer in obtaining replacement goods of an equivalent or similar description and quality to the Goods at the lowest price such replacement goods are available in the market, less an amount equal to the Price for the Goods; and

15.4.2 in relation to a failure by Kaby to perform the Services, Kaby's liability shall be limited to the price incurred by the Buyer in obtaining replacement services of an equivalent or similar description and quality to the Services at the lowest price such replacement services are available in the market, less an amount equal to the Price for the Services, and in each case this shall constitute Kaby's sole liability and the Buyer's exclusive remedy for Kaby's failure to deliver the Goods or perform the Services (as the case may be).

15.5 Notwithstanding the provisions of clauses 6.2 and 6.4, any Claim (including non-contractual claims) made by the Buyer against Kaby arising out of or in connection with the Agreement shall be made in writing and notified to Kaby within the shorter of the following periods:

15.5.1 one year after the end of the Warranty Period;

15.5.2 one year after the date upon which the Buyer became or should have become aware in the ordinary course of business of any event or occurrence alleged to give rise to such Claim; and

15.5.3 if this Agreement is terminated for any reason before delivery of the Goods or performance of the Services is complete, one year after the date of termination of this Agreement.

15.6 Any Claim which is not made in accordance with clause 15.4 shall be deemed to be waived and absolutely barred and Kaby shall be discharged of all liability whatsoever arising in respect of such Claim, to the extent permitted by law.

15.7 Nothing in this Agreement will limit or exclude either Party's liability:

15.7.1 for fraud perpetrated by that Party or its Affiliates including fraudulent misrepresentation;

15.7.2 for death or personal injury caused by negligence of a Party or its Affiliates; or

15.7.3 where such limitation or exclusion would contravene Applicable Law.

15.8 The Price is determined on the basis of the exclusions from and limitations of liability contained in this Agreement.

15.9 The Buyer accepts that these exclusions and limitations are reasonable because of (amongst other matters) the likelihood that otherwise the amount of damages awardable to the Buyer against Kaby for certain acts or omissions of Kaby may be disproportionately greater than the Price.

## **16. FORCE MAJEURE**

16.1 Neither Party shall have any liability or responsibility for any delay or hindrance in fulfilling or any failure to fulfil, any obligation (other than payment) under this Agreement so long as, and to the extent that, the fulfilment of such obligation is prevented, hindered or delayed as a consequence of a Force Majeure Event.

16.2 The Party affected by the Force Majeure Event shall, as soon as reasonably practicable after the occurrence of the Force Majeure Event:

16.2.1 notify the other Party of the nature and extent of the Force Majeure Event; and

16.2.2 use commercially reasonable efforts to commence performing such obligations as soon as possible or otherwise mitigate the effects of the Force Majeure Event by finding a work around to perform the obligation despite the Force Majeure Event.

16.3 Upon the occurrence of a Force Majeure Event, either Party will have the right to terminate all or part of the Agreement in accordance with clause 17.4.

## **17. TERMINATION**



17.1 Without prejudice to any other rights or remedies it may have, Kaby may terminate this Agreement by giving notice to the Buyer if:

17.1.1 the Buyer fails to pay any sums due under this Agreement within fifteen (15) days after receiving notice of such failure to pay; or

17.1.2 the Buyer experiences an insolvency event, including but not limited to (a) where it ceases to carry on its business; (b) has a receiver, administrative receiver, administrator or similar officer appointed over all or any part of its assets or undertakings who is not discharged within 15 days of such appointment; (c) makes an assignment for the benefit of, or a composition with its creditors generally or another arrangement of similar import; (d) goes into liquidation or is the subject of a winding up order otherwise than for the purposes of a bona fide amalgamation or reconstruction; or (e) if any similar event occurs under the law of any jurisdiction.

17.2 The Buyer may terminate this Agreement by giving written notice to Kaby if Kaby commits a material breach of this Agreement and (if such breach is remediable) fails to take reasonable steps to remedy such breach within thirty (30) days after receipt of written notice containing details of the relevant breach.

17.3 Kaby may terminate this Agreement by giving written notice to the Buyer if the Buyer commits a material breach of this Agreement and (if such breach is remediable) fails to remedy such breach within thirty (30) days after receipt of written notice containing details of the relevant breach.

17.4 Either Party may terminate all or part of this Agreement where a Force Majeure Event, affecting the other Party's ability to perform its obligations under this Agreement, continues for a period of ninety (90) days or more.

17.5 If credit insurance affecting the receivables due from the Buyer is removed by the relevant insurer, Kaby may at its discretion cancel the Order.

17.6 The expiration or termination of this Agreement will not affect: any accrued rights of either Party, including any right to receive any payments due but unpaid before expiration or termination; or the continuance in force of clauses 20.1, 6.4, 6.5, 6.6, 8.3, 8.6, 14, 15, 17.6, 18 and 19, which survive termination of this Agreement.

## **18. MISCELLANEOUS**

### **18.1 Compliance with Applicable Law**

18.1.1 Each Party shall and shall procure that each of its Affiliates perform its obligations and exercise its rights pursuant to this Agreement in accordance with all Applicable Laws, including all obligations under the Bribery Act 2010.

18.1.2 If either Party receives any communication from a regulator of the other Party which relates to this Agreement then, to the extent permitted by the regulator, that Party will notify the other Party of the same as soon as reasonably practicable.

### **18.2 Assignment and Subcontracting**

18.2.1 The Buyer shall not, without the prior written consent of Kaby, assign, transfer, charge, mortgage, subcontract or deal in any manner with all or any of its rights or obligations under this Agreement.

18.2.2 Kaby may at any time assign or novate all or any part of its rights and obligations pursuant to this Agreement, to any of its Affiliates or to a successor. All references in this Agreement to Kaby shall be construed as including any Affiliate or successor to which such rights or obligations (or both, as applicable) are assigned or novated.

18.2.3 Kaby may at any time subcontract all or any part of its obligations under this Agreement.

### 18.3 Further Assurance

Each Party will do and execute, or arrange for the doing and executing of, each necessary act, document and thing reasonably within its power to implement and give effect to this Agreement.

### 18.4 Required Consents

Each Party will and will procure that its Affiliates obtain all regulatory approvals, licenses or consents necessary to perform its obligations pursuant to this Agreement.

### 18.5 Waiver

No delay or omission by either Party in enforcing or exercising any right, power or remedy will impair that right, power or remedy or be construed to be a waiver of it. A waiver by either Party of any of its rights, powers or remedies or of any breach will not be construed to be a waiver of any other right, remedy or power or any succeeding breach. No waiver or discharge of any kind will be valid unless in writing and signed by an authorised representative of the Party against whom such waiver or discharge is sought to be enforced.

### 18.6 Severability

If a court of competent jurisdiction or other competent body decides that any provision of this Agreement is void or otherwise ineffective but would be valid and effective if appropriately modified then such provision will apply with the modification necessary to make it valid and effective. If such a provision cannot be so modified, the provisions' invalidity or ineffectiveness will not affect or impair the validity or legal effect of any other provision of this Agreement.

### 18.7 Third Parties

Save for the Affiliates of either Party, nothing in this Agreement will confer upon any third party any right or benefit, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise. Any information, advice or any document incorporating information or advice (including inquest reports and expert reports), which is provided by Kaby to the Buyer in relation to the Deliverables, is for the benefit of the Buyer only. Kaby shall have no liability whatsoever to any third party which relies on such information or advice.

### 18.8 No Partnership or Agency

Nothing in this Agreement creates a joint venture or partnership between the Parties. Except as expressly authorised in this Agreement, this Agreement will not create an agency relationship between the Parties and neither Party has any authority to, and will not, act, make representations or contract on behalf of the other Party.

### 18.9 Variations

No variation or addition to these Standard terms and Conditions of sale shall be valid unless it is in writing and signed by authorised representatives of each Party.

#### 18.10 Entire Agreement

This Agreement sets out the entire agreement between Kaby and the Buyer and supersedes all prior representations, agreements, negotiations or understandings between them relating to the subject matter of the Agreement. Each Party acknowledges that, in entering this Agreement, it has not relied on any statement, representation, assurance or warranty other than those expressly set out in this Agreement.

#### 18.11 Notices

18.11.1 Any notice to be given by either Party to the other under this Agreement must be in writing in the English language addressed to that other Party at its registered office or principal place of business or such other address as may have been notified for these purposes. Notices shall be delivered by hand or sent by prepaid recorded, special delivery or first class post (or air mail post if to an address outside the United Kingdom). Delivery by courier shall be regarded as delivery by hand.

18.11.2 A notice shall be deemed to have been received, if (a) delivered by hand, at the time of delivery; if (b) sent by prepaid recorded, special delivery or first class post, on the second business day after the date of posting and if (c) if sent by prepaid air mail post, on the fifth business day from the date of posting.

18.11.3 A notice given under or in connection with this Agreement is not valid if it is sent by electronic mail.

### 19. GOVERNING LAW AND DISPUTE RESOLUTION

19.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

19.2 The Buyer agrees for the exclusive benefit of Kaby that the courts of England and Wales shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes or claims (including non-contractual disputes or claims) which may arise out of or in connection with this Agreement, its subject matter or formation or any documents entered into in accordance with its provisions (in this clause 19 "Proceedings") and, for such purposes, irrevocably submits to the exclusive jurisdiction of the courts of England and Wales.

### 20. DEFINITIONS AND INTERPRETATION

20.1 Definitions In this Agreement, the following terms will have the following meanings:

"Acknowledgement" means Kaby's written acceptance (including via email or via the Ordering Portal) of an Order;

"Affiliate" means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

"Agreement" means the contract for the supply of the Deliverables by Kaby to the Buyer, comprising these Standard Terms and Conditions of Sale, the Special Terms, the Quotation, the Specification, the Acknowledgement and the Order, and any other documents expressly incorporated by reference;

“Applicable Export Control or Economic Sanctions Programs” has the meaning set out in clause 18.1.3 of these Standard Terms and Conditions of Sale;

“Applicable Law” means any of the following, to the extent that it applies to a Party: (a) any statute, directive, order, enactment, regulation, by-law, ordinance or subordinate legislation in force from time to time; (b) the common law and the law of equity; (c) any binding court order, judgment or decree; (d) any applicable industry code, policy or standard enforceable by law; and (e) any applicable direction, code of practice, policy, rule or order that is given by a regulator that is binding on the Parties, in any jurisdiction applicable to this Agreement (provided that Kaby shall only be obliged to comply with Applicable Laws in such jurisdictions as are expressly identified under the Agreement as being applicable);

“Background IP” in relation to each party, means any Intellectual Property Rights owned by that Party on the date of the Agreement or created or obtained by that party outside the terms of this Agreement and shall include any Intellectual Property Rights contributed by such party to the Specification;

“Buyer” means the person, company, firm or organisation who places the Order;

“Claims” means all or any direct or indirect claims, demands, proceedings or actions (including any brought by a regulator) and including threats of any of the same;

“Confidential Information” means, in respect of a Party or its Affiliates, information in any form (whether written, electronic, graphic, oral or otherwise) that falls within any of the following categories: (a) it has been provided by the Party or its Affiliates and was marked confidential (or a similar designation) or was stated to be confidential at the time of disclosure; (b) information identified in this Agreement as Confidential Information of the Party or its Affiliates; or (c) information which is, by its very nature, would reasonably be considered to be confidential;

“Control” means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly;

“Deliverables” means the Goods and/ or Services to be supplied by Kaby to the Buyer;

“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;

“Delivery Date” means: (a) the date when Kaby places the Goods at the Buyer’s disposal at the Delivery Location; (b) the date the Goods are delivered to the Buyer; or (c) the date when Kaby has agreed to commence performance of the Services; as specified in the Acknowledgement or otherwise agreed between the Parties;

“Delivery Location” means the city or port of load/ discharge as specified in the Acknowledgement or otherwise agreed between the Parties;

“Effective Date” has the meaning set out in clause 1.1;

“Force Majeure Event” means any events beyond the reasonable control of the non-performing party including acts of God, fire, flood, war, acts of terrorism, riot, civil commotion, governmental actions, labour disputes, shortages of necessary raw materials or utilities and breakdown or failure of machinery;

“Standard Terms and Conditions of Sale” means clauses 20 to 19 (inclusive);

“Goods” means the goods to be provided by Kaby to the Buyer, as described in the Acknowledgement or otherwise agreed between the Parties;

“Handling Instructions” means any and all written instructions, recommendations and advice issued by Kaby from time to time in relation to the handling, storage and maintenance of the Goods;

“Incoterms” reference to Incoterms herein shall be deemed to be a reference to the most recent version of the Incoterms published by the International Chamber of Commerce (ICC);

“Intellectual Property Rights” means: copyright, database rights, design rights (whether registered or unregistered), rights in know how and Confidential Information; (a) patents, utility models, trade marks, trade names, IP addresses or IP address schemes, domain names and topography rights; (b) applications for or registrations of any of the rights described in (a) or (b) above; and any other intellectual property having a similar nature or equivalent effect anywhere in the world;

“Kaby” means Kaby engineers Ltd;

“Order” means the Buyer’s offer to purchase Goods and/or Services, as described in a Quotation, in the form which is expressly accepted by Kaby;

“Ordering Portal” means the Buyer’s electronic ordering system (if any) ;

“Party” means either Kaby or Buyer and “Parties” means both Kaby and Buyer; “Price” has the meaning set out in clause 9.1 of these Standard Terms and Conditions of Sale; “Quotation” means, as applicable: (a) a document issued by Kaby to the Buyer, on Kaby’s standard form or in another format, which sets out details of the relevant Goods and/or Services, any Special Terms and the Price; or (b) where the Buyer is purchasing Goods or Services from the Standard Price List, that Standard Price List shall be deemed to be the Quotation;

“Services” means the services to be provided by Kaby to the Buyer, as described in the Acknowledgement or otherwise agreed in writing between the Parties;

"Special Terms" means any additional terms and conditions set out or referred to in the Acknowledgement relating to the supply of the Deliverables;

“Specification” means the document or documents detailing the technical requirements of the Deliverables upon which Kaby provided the Quotation and as such is confirmed in the Acknowledgement;

“Standard Price List” means Kaby’s commercially available price list, setting out the prices for its goods and services, as may change from time to time;

## 20.2 Interpretation

20.2.1 Unless otherwise defined in clause 20.1, terms used in the [manufacturing/steel] Industry or other relevant business context will be interpreted in accordance with their generally understood meaning in that industry or business context. In the event of any conflict or inconsistency between them, the following parts of the Agreement shall take precedence in the following order:

- (a) the Acknowledgement;
- (b) the Special Terms;
- (c) the Standard Terms and Conditions of Sale;
- (d) the Specification;
- (e) the Order; and
- (f) the Quotation