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1 Interpretation

1.1 Definitions:

2 “**Applicable Laws**” means the laws of England and Wales and any other laws relevant to the production, supply, and disposal of the Goods under this Contract;

“**AS9100 Standards**” means the standards included in Schedule 2 and as amended from time to time.

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

“**Buyer**” means Indestructible Paint Limited, a company registered in England with company registration number 1376995, whose registered office is at 16-25 Pentos Drive, Sparkhill, Birmingham, B11 3TA, UK


“**Buyer Materials**” shall have the meaning given to it in clause 9.1;

“**Certificate of Analysis**” means the document, provided by the Seller to the Buyer for Goods, confirming the chemical composition of the Goods and referring to the relevant batch number;

“**Certificate of Conformity**” means the document, provided by the Seller to the Buyer for Goods being provided, confirming that the Goods have been Tested and comply with the Specification, including any relevant standards and referring to the relevant batch number;

“**Collection Location**” means the address for collection of the Goods as set out in the Order;

“**Conditions**” means the terms and conditions set out in this document as amended from time to time in accordance with clause 16.4;

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“**Contract**” means the contract between the Buyer and the Seller for the sale and purchase of the Goods in accordance with these Conditions and any other documents incorporated by reference in these Conditions;

“**Delivery Date**” means the date specified in the Order, or, if none is specified, the date within seven (7) days of the date of the Order;

“**Delivery Location**” means the address for delivery of Goods as set out in the Order;

“**Goods**” means the goods (or any part of them) or samples of goods, set out in the Order;

“**Mandatory Policies**” means the Buyer’s business policies and codes, including those attached in the Appendices to these Conditions and as amended by notification to the Seller from time to time;

“**Order**” means the Buyer’s order for the Goods, as set out in the Buyer’s purchase order form;

“**Quotation**” means a quote supplied by the Seller to the Buyer in response to the Buyer’s request for a quotation;


“**SDS**” means the safety data sheet or material safety data sheet (as applicable) for each type of the Goods, which includes a list of hazards and safety instructions provided by the Seller to the Buyer, as updated from time to time;

“**Specification**” means any specification for the Goods, including any related formulae, plans and drawings, that is agreed in writing by the Buyer and the Seller;

“**Seller**” means the person or firm from whom the Buyer purchases the Goods;

“**Supplier Assessment Form**” means the form provided by the Buyer to the Seller, in order for the Buyer to undertake a review of the Seller’s performance;

“**Test Report**” means the report of the data created by undertaking the Tests of the Goods; and

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“**Tests**” means the standard tests, carried out by the Seller, in respect of the Goods to determine that the Goods are compliant with the Specification and “**Testing**” and “**Tested**” and “**Test**” shall be construed accordingly.

2.1 Interpretation:

2.1.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

2.1.2 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

2.1.3 a reference to **writing** or **written** includes emails.

3 Basis of contract

3.1 These Conditions apply to the Contract to the exclusion of any other terms that the Seller seeks to impose or incorporate including the Seller’s terms and conditions of sale, or which are implied by trade, custom, practice or course of dealing.

3.2 A Quotation for the Goods given by the Seller shall not constitute an offer.


3.3 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions.

3.4 The Order shall be deemed to be accepted on the earlier of:

3.4.1 the Seller issuing a written acceptance of the Order; and

3.4.2 the Seller doing any act consistent with fulfilling the Order,

at which point the Contract shall come into existence.

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3.5 The Seller waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Seller that is inconsistent with these Conditions.

4 The Goods

4.1 The Seller shall warrants, represents and undertakes that on delivery and for a period agreed between the parties in writing (“**warranty period**”) the Goods shall:

4.1.1 correspond with their description and any applicable Specification;

4.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller by the Buyer expressly or by implication, and in this respect the Buyer relies on the Seller’s skill and judgement;


4.1.3 where they are manufactured products, be free from defects in design, material and workmanship;

4.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods and the latest version of the AS9100 Standards and in particular clauses 8.4.3(k), (l) and (m) of those standards shown in Schedule 2.

4.2 The Seller warrants, undertakes and represents that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

4.3 The Seller shall warrants, represents and undertakes that it has carried out sufficient Testing to ensure that the Goods comply with the Specification and any specific requirements, including any applicable to the aerospace industry.

4.4 The Buyer may inspect and test the Goods at any time before acceptance of delivery. The Seller shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Seller’s obligations under the Contract.

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4.5 If following such inspection or testing the Buyer considers that the Goods do not conform or are unlikely to comply with the Seller's undertakings at clause 4.1, the Buyer shall inform the Seller and the Seller shall immediately take such remedial action as is necessary to ensure compliance.

4.6 The Buyer may conduct further inspections and tests after the Seller has carried out its remedial actions.

5 Delivery

5.1 The Seller shall ensure that:

5.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their identified destination in good condition and in full compliance with any Applicable Laws, including any in respect of the safe transport of the Goods;


5.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage or handling instructions (if any) and, if the Buyer agrees (in accordance with clause 5.8) that the Goods may be delivered in instalments, the outstanding balance of Goods remaining to be delivered; and

5.1.3 if the Seller requires the Buyer to return any packaging material to the Seller, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Seller at the cost of the Seller.

5.2 The parties agree, as set out in the Buyer's Order:

5.2.1 to delivery of the Goods, Certificate of Conformity and/or Certificate of Analysis, as relevant, by the Seller:

(i) on the Delivery Date;

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(ii) at the Delivery Location; and

(iii) during the Buyer's normal business hours, or as instructed by the Buyer, or

5.2.2 that the Goods shall be collected from the Collection Location at any time from the Delivery Date.

5.3 Time for delivery by the Seller shall be of the essence.

5.4 Delivery of the Goods in accordance with clause 5.2.1 shall be completed on the completion of unloading the Goods at the Delivery Location.

5.5 Collection of the Goods in accordance with clause 5.2.2 shall be completed on the completion of the loading of the Goods at the Collection Location.


5.6 If the Seller:

5.6.1 delivers less than 95% of the quantity of Goods ordered, the Buyer may reject the Goods; or

5.6.2 delivers more than 105% of the quantity of Goods ordered, the Buyer may at its discretion reject the Goods or the excess Goods and any rejected Goods shall be returnable at the Seller's risk and expense. If the Seller delivers more or less than the quantity of Goods ordered, and the Buyer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

5.7 Any return of the Goods under clause 5.6 will be made at the Seller's own risk and expense.

5.8 The Seller shall not deliver the Goods in instalments without the Buyer's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Seller to deliver any one instalment on time or at all, or any defect in an instalment shall entitle the Buyer to the remedies set out in clause 6.

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5.9 If the Seller is aware that delivery will not be made by the agreed delivery date, it shall inform the Buyer immediately and provide a new estimated delivery date. This shall not affect any of the Buyer's rights or remedies.

5.10 The Seller shall provide an SDS or any other documentation agreed between the parties before delivery of the Goods to the Buyer.

6 Remedies

6.1 If the Goods are not delivered on the Delivery Date, or do not comply with the warranties, representations and undertakings set out in clause 4.1 or any other requirements set out in these Conditions, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Buyer may exercise any one or more of the following remedies:

6.1.1 terminate the Contract;

6.1.2 reject the Goods (in whole or in part) and return them to the Seller at the Seller's own risk and expense;


6.1.3 require the Seller to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;

6.1.4 refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;

6.1.5 recover from the Seller any costs incurred by the Buyer in obtaining substitute goods from a third party; and

6.1.6 claim damages for any other costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to carry out its obligations under the Contract.

6.2 If the Goods are not delivered on the Delivery Date the Buyer may, without prejudice to its other rights and remedies, at its option, claim or deduct an amount equal to two and a half percent (2.5%) of the price of the Goods for each week's delay in delivery

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by way of liquidated damages, up to a maximum of twenty-five percent 25% of the total price of the Goods. The parties agree that the liquidated damages in this clause 6.2 is proportionate to the Buyer's legitimate interest in the Seller's performance of its obligation to deliver the Goods by the Delivery Date. These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

6.3 The Buyer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

7 Title and risk

7.1 Title and risk in the Goods shall pass to the Buyer on completion of delivery.

8 Price and payment

8.1 The price of the Goods shall be the price set out in the Order, or, if no price is provided in the Order, the price set out in the Quotation, or, if no price is provided in the Order or the Quotation, the price set out in the Seller's published price list in force as at the date the Contract came into existence.


8.2 The price of the Goods:

8.2.1 excludes amounts in respect of value added tax (**VAT**), which the Buyer shall additionally be liable to pay to the Seller at the prevailing rate, subject to the receipt of a valid VAT invoice; and

8.2.2 includes the costs of packaging, insurance and carriage of the Goods.

8.3 No extra charges shall be effective unless agreed in writing with the Buyer.

8.4 The Seller may invoice the Buyer for price of the Goods plus VAT at the prevailing rate (if applicable) on or at any time after the completion of delivery. The Seller shall ensure that the invoice includes the date of the Order, the invoice number, the Buyer's order number (where relevant), the Seller's VAT registration number and any supporting documents that the Buyer may reasonably require.

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8.5 The Buyer shall pay correctly rendered invoices within thirty (30) days from the end of the month in which the invoice is received. Payment shall be made to the bank account nominated in writing by the Seller.

8.6 If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above National Westminster Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.


8.7 The Buyer may at any time, without limiting any of its other rights or remedies, make any deductions or withholdings from any amounts due to the Seller to cover any amounts the Seller owes to the Buyer and the Buyer may also set-off or counterclaim any liability of the Seller to the Buyer against any liability of the Buyer to the Seller.

9 Buyer materials

9.1 The Seller acknowledges that all materials, equipment and tools, drawings, formulae, Specifications, and data supplied by the Buyer to the Seller ("**Buyer Materials**") and all rights in the Buyer Materials are and shall remain the exclusive property of the Buyer. The Seller shall keep the Buyer Materials in safe custody at its own risk, maintain them in good condition until returned to the Buyer and not dispose or use the same other than in accordance with the Buyer's written instructions or authorisation.

10 Audit and Review


10.1 The Seller shall allow the Buyer, its professional advisers, and all relevant regulatory authorities to access the Seller's premises, systems and relevant records to verify the price charged, the Seller's compliance with regulatory requirements and any requirements under this Contract is accurate and to confirm compliance by the Seller with this Contract.

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- 10.2 Subject to the Buyer's obligations of confidentiality under clause 13 (Confidentiality), the Seller shall provide the Buyer (and its professional advisers and any regulatory authorities) with all reasonable co-operation, access and assistance in relation to each audit.
- 10.3 The Buyer shall, where reasonably practicable, provide at least five (5) Business Days' notice of its intention to conduct an audit and any audit shall be conducted during business hours.
- 10.4 The Buyer, its professional advisers and any relevant regulatory authorities shall have the right to take copies of any records which they reasonably require free of charge.
- 10.5 Without prejudice to any other rights and remedies it may have, the Buyer may require the Seller to complete the Supplier Assessment Form. The Seller shall complete the Supplier Assessment Form promptly and ensure that all information provided is true, complete and accurate.

11 Indemnity

- 11.1 The Seller shall indemnify and keep the Buyer fully and effectively indemnified from and against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Buyer as a result of or in connection with:
- 11.1.1 any claim made against the Buyer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Seller, its employees, agents or subcontractors;
- 11.1.2 any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods,

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to the extent that the defects in the Goods are attributable to the acts or omissions of the Seller, its employees, agents or subcontractors; and


11.1.3 any claim made against the Buyer by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Seller, its employees, agents or subcontractors.

12 Insurance

12.1 During the term of the Contract and for a period of six (6) years thereafter, the Seller shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Buyer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

13 Confidentiality

13.1 A party ("**receiving party**") shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party ("**disclosing party**"), its employees, agents or subcontractors and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

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14 Compliance with relevant laws and policies

14.1 In performing its obligations under the Contract, the Seller shall:

14.1.1 comply with all Applicable Laws from time to time in force;

14.1.2 comply with the Mandatory Policies; and

14.1.3 comply with AS9100 Standards as per Schedule 2.

14.2 The Buyer may immediately terminate the Contract for any breach of this clause 14.


15 Termination

15.1 The Buyer may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Seller written notice, whereupon the Seller shall discontinue all work on the Contract. The Buyer shall pay the Seller fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

15.2 Without limiting its other rights or remedies, the Buyer may terminate the Contract with immediate effect by giving written notice to the Seller if:

15.2.1 the Seller commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within [thirty (30) days or the lead time [as agreed between the parties in writing in the Order], (whichever is the lesser), of that party being notified in writing to do so;

15.2.2 the Seller takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken

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in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

15.2.3 the Seller takes any step or action in connection with the Seller being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his assets, or ceasing to carry on business or if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

15.2.4 the Seller suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

15.2.5 the Seller's financial position deteriorates to such an extent that in the Buyer's opinion the Seller's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

15.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

15.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.


15.5 Without limiting the generality of Clause 15.4 above, Clauses 4.1, 4.2, 4.3, 9, 11, 12, 13, 16.3, 16.8, 16.9 and 16.10 shall survive termination or expiry of the Contract and shall continue in full force and effect.

16 General

16.1 Assignment and other dealings

16.1.1 The Buyer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

16.1.2 The Seller may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or

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obligations under the Contract without the prior written consent of the Buyer.

16.2 **Subcontracting.** The Seller may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Buyer. If the Buyer consents to any subcontracting by the Seller, the Seller shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

16.3 **Entire agreement.** The Contract and any documents incorporated by reference in these Conditions, constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.


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

16.5 **Waiver.** Except as set out in clause 3.5, no failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

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

16.7 **Notices.**

16.7.1 Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a

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company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or email.


16.7.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.7.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

16.7.3 This clause does not apply to the service of any proceedings or other documents in any legal action, or other method of dispute resolution.

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

16.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

16.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

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Schedule 1

Customer's Mandatory Policies

A list of common industry-wide policies is demonstrated below; this is not a limited list:

Anti-Bribery Act / Code of Ethics - UK Bribery Act 2010

Anti-Fraud – Fraud Act 2006

Conflict Minerals - Regulation (EU) 2017/821


Counterfeit Avoidance - DEF STAN 05-135: Fraudulent and Counterfeit Materiel Avoidance
Defence Standard By UK Mod

Cyber Security – ISO27001

Modern Slavery – Modern Slavery Act 2015

Substance Abuse - Misuse of Drugs Act 1971

Whistle-blower Policy - The Companies Act, 2013

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Schedule 2

AS9100 Requirements

AS9100 Revision D with specific reference to Clause 8.4.3 Information for External Providers where the supplier will need to comply with clauses K, L and M as a minimum and clauses below as appropriate:

g. design and development control;

h. special requirements, critical items, or key characteristics;

i. test, inspection, and verification (including production process verification);

j. the use of statistical techniques for product acceptance and related instructions for acceptance by the organization;

K. the need to:

- implement a quality management system;
- use customer-designated or approved external providers, including process sources (e.g., special processes);
- notify the organization of nonconforming processes, products, or services and obtain approval for their disposition;
- prevent the use of counterfeit parts (see AS9100 Revision D clause 8.1.4);
- notify the organization of changes to processes, products, or services, including changes of their external providers or location of manufacture, and obtain the organization's approval;
- flow down to external providers applicable requirements including customer requirements;
- provide test specimens for design approval, inspection/verification, investigation, or auditing;
- documented information shall be maintained indefinitely and permission sort before disposal;

l. the right of access by the organization, their customer, and regulatory authorities to the applicable areas of facilities and to applicable documented information, at any level of the supply chain;

m. ensuring that persons are aware of:

- their contribution to product or service conformity;
- their contribution to product safety;
- the importance of ethical behaviour.