

Terms and Conditions

TERMS & CONDITIONS FOR THE SALE OF GOODS

1 INTERPRETATION

In these terms and conditions:

"Background Intellectual Property" means the Intellectual Property owned or controlled by either Party existing at the date of the Contract or generated other than through the performance of work under this Contract and which is used in the provision of the Goods;

"Charges" means the charges made by Omni-ID for the provision of the Goods including any Value Added Tax or other similar taxes;

"Contract" means the written agreement concluded between Omni-ID and the Customer, including any Order, the Specification, and any other plans, drawings and other documents that are expressly incorporated into it, and incorporating these terms and conditions;

"Customer" means the party who purchases or agrees to purchase the Goods;

"Customer Resources" has the meaning given in Clause 4.1;

"Foreground Intellectual Property" means Intellectual Property arising out of performance of any work under this Contract (but for the avoidance of doubt excluding Background Intellectual Property);

"Goods" means any goods, articles, documents or other materials, and any data or other information which are stated in the Contract to be provided by Omni-ID to the Customer.

"Intellectual Property" means all patents, utility models, trademarks, rights (registered and unregistered) in any designs; applications for any of the foregoing; copyright; semi-conductor topography rights; database rights; rights protecting goodwill and reputation; know-how; inventions, secret formulae and processes; other confidential information and all rights and forms of protection of a similar nature to these or having equivalent effect anywhere in the world.

"Order" means a purchase order for Goods issued by the Customer and accepted by Omni-ID subject to the terms and conditions of this Agreement.

"Party" means either of Omni-ID and the Customer as applicable, together being the "Parties";

"Proprietary Information" means trade secrets, and all other information of a confidential or proprietary nature including but not limited to any and all technical information, data, drawings, process information and know-how and embracing reports, computer software (whether in object or source code) and designs and any information concerning products, customers, business accounts, financial or contractual arrangements or other dealings, transactions or affairs, reports, recommendations, advice or tests and development plans, and in whatever form whether in writing, given orally or contained in an electronic format, and which is either marked as confidential (or with some similar legend) or otherwise designated as confidential;

"Omni-ID" means Omni-ID USA Inc. A Delaware Corporation with Corporate offices located at 1200 Ridgeway Avenue, Suite 106, Rochester NY, United States of America, 14615 and any affiliates collectively known as Omni-ID.

"Specification" means the description, purpose and technical specification for the Goods, as described by the product code detailed in the Contract; and

"Trademarks" means the trademark 'Omni-ID' and any other unregistered trademarks owned by Omni-ID in any jurisdiction.

2 APPLICATION OF TERMS

- 2.1 These terms and conditions are the only terms upon which Omni-ID is prepared to deal with the Customer and they shall govern the Contract to the entire exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 Each order by the Customer for the supply of Goods from Omni-ID shall be deemed to be an offer by the Customer to purchase Goods subject to these terms and conditions
- 2.3 Where under this Contract, in addition to the Goods, Omni-ID supplies to the Customer any software, the provision and use of such software shall be governed by the terms of a separate software licence which shall be entered into between Omni-ID and the Customer. To the extent that there is any conflict between these Conditions and such software licence, the terms of such software licence shall prevail.

3 SUPPLY OF GOODS AND DELIVERY

- 3.1 Orders shall not be deemed accepted until Omni-ID either provides written notice or ships the Products. Unless otherwise stated in the Contract, the Goods shall be delivered by Omni-ID EXW (Ex Works) at Omni-ID's place of business notified in the Contract

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and packaging, carriage and insurance is the responsibility and at the cost of the Customer. Unless otherwise requested, at an additional cost to the Customer and at the Customer's risk, Omni-ID will arrange packaging of the Goods at the place of business notified in the Contract.

- 3.2 The Customer shall be responsible for providing all appropriate instructions, documents, licences or authorisations in a timely manner to enable Omni-ID to deliver the Goods.
- 3.3 If for any reason the Customer does not accept delivery of any Goods when they are ready for delivery, then Omni-ID may store the Goods and the Customer shall pay Omni-ID its reasonable charges in respect of such storage. In the event that such Goods have not been collected by the Customer within sixty (60) days from receipt of notification from Omni-ID, Omni-ID may dispose of such Goods at the Customer's expense.
- 3.4 The Customer shall notify Omni-ID of any damage to Goods or shortfall in quantity within ten (10) days of delivery.
- 3.5 Where the Customer re-sells the Goods, the Customer will have no right to use or apply the Trademarks, without the prior written consent of Omni-ID. The Customer acknowledges that the trademark 'Omni-ID' is owned by Omni-ID. For the purposes of promotional materials in respect of Omni-ID Goods, Customer may use the Trademarks, owned by Omni-ID, always subject to Omni-ID's prior written consent and on the condition that Customer may only refer to itself as the user or reseller of the Goods. All goodwill in the Trademarks shall belong to Omni-ID.
- 3.6 Where the Customer integrates the Goods with the Customer's products, the Goods shall at Omni-ID's instruction include the statement 'Patent pending' and include the relevant patent numbers as notified by Omni-ID and shall be scribed as appropriate by the Customer and at the Customer's cost to the Goods.

4 CUSTOMER RESOURCES

- 4.1 The Customer will make available free of charge and risk to Omni-ID at the times stated in the Contract or otherwise in a timely manner all necessary personnel, materials, equipment and resources ("Customer Resources") reasonably required by Omni-ID to supply the Goods, and (to the extent applicable) the Customer shall, at its expense, remove any Customer Resources which are at Omni-ID's premises and which have not been incorporated into the Goods, at the expiry or earlier termination of the Contract.
- 4.2 The Customer represents and warrants that it has the full right, authority and licence to enter into this Contract and to supply and disclose the Customer Resources and that any Customer Resource and its use by Omni-ID for the purpose of supplying the Goods will not infringe the copyright or other intellectual property rights of any third party.
- 4.3 In the event of any failure or delay on the part of the Customer to supply such Customer Resources, or if the same are not in accordance with this Contract or are not fit for the purpose provided, then Omni-ID shall within a reasonable time notify the Customer of any delay or defect, including particulars of the same and the Customer shall as soon as reasonably practicable and at its own expense supply replacement Customer Resources or make good such defect. In such circumstances, Omni-ID may: (i) extend the period for delivery of the Goods by a reasonable time; and (ii) adjust the Charges to meet any additional expenditure incurred by Omni-ID as a result of any delay and the Customer shall pay such additional Charges.

5 PRICE AND PAYMENT TERMS

- 5.1 Omni-ID shall invoice the Customer at the times stated in the Contract, or otherwise upon delivery of the Goods.
- 5.2 The Customer shall pay to Omni-ID the Charges in respect of the Goods by bank transfer, to a bank account nominated by Omni-ID, or by cheque, drawn in the invoice currency, payable to Omni-ID, within the period stated on the quotation.
- 5.3 Unless otherwise stated in the Contract, prices shown in the Contract are exclusive of any Value Added Tax, sales tax or similar, and any taxes, duties or imposts chargeable thereon by any Government, Local Government or statutory body and other duties and taxes all of which shall be payable by the Customer as an additional charge.
- 5.4 If the Customer disputes any invoice or part thereof, the Customer shall immediately notify Omni-ID in writing of the reasons therefore. The Customer shall immediately pay the undisputed portion of the invoice and the Parties shall seek to resolve the dispute within 14 days, and in the absence of a resolution the provisions of Clause 20 (Dispute Resolution) shall apply. Upon resolution of the dispute, such sum as is agreed by the Parties as payable shall be paid immediately to Omni-ID, together with any interest due under Clause 5.5.
- 5.5 Whenever under the Contract any sum of money shall be recoverable from or payable by the Customer, Omni-ID may deduct the same from any sum then due to the Customer under the Contract or any other contract between Omni-ID and the Customer.
- 5.6 With the prior written consent of Omni-ID an order may be cancelled. Any permitted cancellation shall be subject to a cancellation fee as follows: (a) if cancellation occurs at least ninety (90) days prior to the scheduled delivery date, no cancellation fee shall apply; (b) if cancellation occurs at least sixty (60) days but less than ninety (90) days prior to the scheduled delivery date, a cancellation fee equal to 50% of the price attributable to all (or that portion) of the order that has been cancelled shall be payable immediately; and (c) if cancellation occurs within thirty (30) days of the delivery date, a cancellation fee of 100% of the price attributable to all (or that portion) of the order that has been cancelled shall be payable immediately.

6 INTELLECTUAL PROPERTY RIGHTS

- 6.1 Nothing herein shall imply any change in ownership of Background Intellectual Property.

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- 6.2 Subject to the rights of third-party subcontractors of Omni-ID, all Foreground Intellectual Property shall be the property of Omni-ID.
- 6.3 Omni-ID hereby grants to the Customer a non-exclusive, royalty-free right and licence to use the Foreground Intellectual Property contained in the Goods solely for the purpose stated in the Contract or, if no such purpose is stated, solely to the extent that the Customer needs to use the Foreground Intellectual Property to enable it to use the Goods as set out in the Contract.
- 6.4 All documents, drawings, designs information, data, software, databases, or information (and any copies thereof) produced under the Contract are the exclusive property of Omni-ID. Upon request from Omni-ID, the Customer shall return to Omni-ID any such documents, drawings, designs information, data, software, databases, or information to the extent that they do not form part of the Goods.
- 6.5 The Customer shall at Omni-ID's request (and shall procure that its employees, agents or officers) carry out all reasonable acts (including prompt signature of documents) necessary to fulfil the rights of Omni-ID under this Clause 6.

7 RISK AND TITLE

- 7.1 The Goods shall be at the risk of the Customer from the time of delivery in accordance with Clause 3.
- 7.2 Where under the Contract ownership of any Goods shall pass to the Customer, such ownership shall not pass until Omni-ID has received in full (in cash or cleared funds) all sums due to it in respect of (i) the Goods; and (ii) all other sums which are or which become due to Omni-ID from the Customer under the Contract.
- 7.3 Omni-ID shall be entitled to recover payment for the Goods notwithstanding that ownership of any Goods have not passed to the Customer.
- 7.4 Prior to ownership of any Goods passing to the Customer, the Customer grants Omni-ID, its agents and employees an irrevocable licence at any time to enter any premises, on reasonable notice, where such Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

8 OMNI-ID'S PERSONNEL

The Customer undertakes during the term of the Contract and for two years after completion or earlier determination of the Contract not to solicit or make an offer of employment (or an offer for services) to any Omni-ID employee, officer or agent engaged in performance of work under this Contract.

9 WORK PERFORMED ON OMNI-ID'S OR CUSTOMER'S PREMISES

- 9.1 The Customer's employees, agents and representatives shall abide by such regulations, including security and health and safety regulations, as are applicable to their presence on Omni-ID's premises. A copy of those regulations will be available from Omni-ID on demand.
- 9.2 Omni-ID shall have the right to require the removal from its premises of anyone disobeying such regulations and reserves the right to refuse entry to its premises to any person whom it considers unsuitable.
- 9.3 Where the Contract requires Omni-ID to perform work at the Customer's premises, the Customer shall be responsible for arranging, in good time, all permits, licences or other permissions necessary to enable Omni-ID's employees, agents and representatives to gain access to, and perform the work at, such premises. Omni-ID's employees, agents and representatives working on the Customer's premises shall abide by such regulations detailed in the Contract as are applicable to their presence on the Customer's premises.

10 WARRANTY

- 10.1 Omni-ID warrants that at the time of delivery the Goods supplied shall be substantially in accordance with the Specification and any plans, drawings and other documents expressly incorporated into this Contract. Notwithstanding the generality of the foregoing, OMNI-ID MAKES NO WARRANTY THAT ALL OR ANY OF THE GOODS WILL BE SUITABLE TO ENABLE THE CUSTOMER TO ACHIEVE ANY PARTICULAR PURPOSE EVEN WHEN SUCH PURPOSE HAS BEEN NOTIFIED TO OMNI-ID.
- 10.2 Omni-ID makes no warranty that all or any of the Goods will not infringe the rights of any third party.
- 10.3 Omni-ID makes no warranty for the use made of all or any of the Goods by the Customer. Further, Omni-ID makes no warranty for any use of the Goods by any third party who has obtained such Goods directly or indirectly from the Customer and the Customer hereby indemnifies Omni-ID from and against any claims against Omni-ID arising from or relating to any use of the Goods.
- 10.4 Subject to Clause 10.5 below, if any defect or fault is found to exist in the Goods within a period of twelve (12) months, and for the types of Goods specifically listed in sub-clauses 10.4.1. and 10.4.2. for the periods defined therein, from delivery of the Goods due to the performance of work by Omni-ID under this Contract, Omni-ID shall at its option either (i) repair or replace any Goods (or the defective part) or (ii) refund such proportion of the Charges paid to Omni-ID by the Customer for the Goods as is reasonable, PROVIDED THAT, if Omni-ID so requests, the Customer shall, at the Customer's expense, return any Goods or the part which is defective to Omni-ID. The twelve-month warranty period under this clause 10.4, shall not apply in respect of the following specified Goods sold by Omni-ID:

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10.4.1. The Omni-ID P400, P400X, Omni-ID Prox Rigid Case tag, Omni-ID EXO 600, EXO 800, Adept 500, Omni-ID Flex Rigid Case tag, Omni-ID Max Rigid Case tag, Omni-ID EXO 750 tag, Omni-ID EXO 600 tag, Omni-ID EXO 800 tag, Omni-ID Max HD tag, Omni-ID DURA 1500 tag, Omni-ID Ultra tag, and Omni-ID Dura 3000 tag, for which the warranty period for each such product shall be thirty-six (36) months within the terms of this clause 10.4; and

10.4.2. Omni-ID Solo tag and Omni-ID Pipe tag for which the warranty period for each such product shall be six (6) months within the terms of this clause 10.

10.5 Omni-ID shall only be liable for a breach of the warranty in Clause 10.1 or 10.4 if:

10.5.1 the Customer gives written notice of the alleged breach to Omni-ID within ten (10) days of the time when the Customer discovers or ought to have discovered it and, in any event, no later than ten (10) days after the expiry of the warranty period stated in Clause 10.4; and

10.5.2 Omni-ID is given a reasonable opportunity after receiving the notice, of examining any relevant Goods and the Customer (if asked to do so by Omni-ID) returns them to Omni-ID's place of business, at the Customer's cost, for the examination to take place there; and

10.5.3 the Customer does not make any further use of the relevant Goods after giving such notice; and

10.5.4 Any markings placed on the Goods by Omni-ID has not been erased or removed from the Goods;

10.5.5 the defect did not arise because (i) the Customer failed to follow Omni-ID'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 (ii) the Customer integrates the Goods with the Customer's products, or (iii) the Customer, alters or repairs any Goods without the prior written consent of Omni-ID; or (iv) of fair wear and tear or due to misuse; and

10.5.6 there are no sums due and outstanding under the Contract at the date of any breach of the warranty which the Customer has failed to make payment of in accordance with the Contract.

10.6 Where Omni-ID supplies, under this Contract, any goods supplied by a third party, Omni-ID does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Customer the benefit of any warranty, guarantee or indemnity given by the party supplying the goods to Omni-ID.

10.7 THE CUSTOMER ACCEPTS THAT THE EXPRESS BENEFITS OF THE WARRANTY GRANTED UNDER THIS CONDITION 10 SHALL BE THE CUSTOMER'S SOLE REMEDY FOR ANY BREACH OF WARRANTY EXPRESSED OR IMPLIED WHETHER STATUTORY OR OTHERWISE IN RESPECT OF THE SUPPLY OF GOODS UNDER THIS CONTRACT.

11 SUPPORT AND MAINTENANCE AGREEMENT (SMA)

11.1 Where SMAs are sold with any system, device or application that has software content (Supported Products), the following terms apply:

11.1.1 The SMA is valid only for the calendar term stated, although the term may be automatically renewed by mutual agreement.

11.1.2 Throughout the term, Omni-ID will provide phone/online support during regular business hours, software key portability/replacement, software updates and related release notes for the Supported Products.

11.1.3 On-site troubleshooting, consulting or custom product updates are not covered under the SMA unless explicitly agreed in writing.

12 DELAY IN DELIVERY

12.1 Omni-ID shall use its reasonable endeavours to achieve any dates agreed for delivery but shall be under no liability for any failure to achieve such dates.

13 LIMITATION OF LIABILITY

13.1 The following provisions set out the entire financial liability of Omni-ID (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

13.1.1 any breach of the Contract; and

13.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

13.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

13.3 Nothing in the Contract shall exclude or limit the liability of Omni-ID for;

13.3.1 death or personal injury caused by Omni-ID's negligence; or

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- 13.3.2 fraud committed by Omni-ID (including fraudulent misrepresentation); or
- 13.3.3 any other matter which it would be illegal, or in breach of any statutory provision, for Omni-ID to exclude or attempt to exclude its liability for.
- 13.4 Subject to Clause 12.3, Omni-ID's aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the Charges payable under the relevant Order of the Contract pursuant to Clause 5 to which the Customer's claim relates.
- 13.5 Subject to Clause 12.3, Omni-ID shall not be liable to the Customer for: (i) any, indirect, special or consequential loss, damage, costs, expenses or other claims whatsoever; or (ii) any economic loss (including loss of profit, loss of business, depletion of goodwill or like loss); or (iii) any loss, damage or liability to the extent caused by the negligence, wilful misconduct or other fault of the Customer, its employees, agents or contractors or a breach by the Customer of this Contract; in each case howsoever caused, including without limitation negligence or breach of statutory duty or misrepresentation, arising out of or in connection with the Contract.
- 14 DESCRIPTION
- Except to the extent that they form part of the Specification or are expressly incorporated into this Contract, all drawings, descriptive matter, specifications and advertising issued by Omni-ID and any descriptions or illustrations contained in Omni-ID's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the matters described in them and will not form part of this Contract.
- 15 SAFETY
- 15.1 The Customer shall, in accordance with statutory health and safety requirements, provide prior written notice to Omni-ID of any health or safety hazards associated with any Customer Resources and/or Customer facilities used by Omni-ID in connection with the supply of Goods.
- 15.2 Omni-ID reserves the right to inspect any Customer Resources which Customer wishes to deliver to any Omni-ID premises and to refuse them entry if Omni-ID considers them to be unsafe or pose unacceptable risks of injury or damage to persons or property.
- 15.3 The Customer shall meet any reasonable costs incurred by Omni-ID resulting from the rejection of such Customer Resources by Omni-ID and Omni-ID shall not be liable for any costs or delays to the Contract resulting from any decision under this Clause.
- 15.4 Omni-ID may at any time make any changes to the Goods which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Goods. Omni-ID shall within a reasonable time notify the Customer that such changes have been made. In the event that changes are made to the Goods resulting from safety or other statutory requirements which become effective after the date of this Contract, then the reasonable charges associated with such change shall be to the Customer's account and Omni-ID shall be entitled to a reasonable extension of time for delivery of the Goods.
- 16 COMMERCIAL CONFIDENTIALITY
- 16.1 Without prejudice to the rights of either Party arising elsewhere in the Contract, all Proprietary Information exchanged between the Customer and Omni-ID (including that contained in any Customer Resources and the Goods) shall be treated as commercially confidential in accordance with this Clause.
- 16.2 Neither Party shall use, disclose or knowingly permit to be disclosed to any person (except those employees, agents or sub-contractors who need to know the information for the purposes of the Contract) any Proprietary Information of the other Party without the prior written consent of the other Party and both Parties shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Parties.
- 16.3 The obligations of confidentiality owed by one Party to the other set out in this Clause shall remain in force despite the completion (or earlier determination) of the Contract but shall not apply to information which:
- 16.3.1 is in or enters the public domain (otherwise than by a breach of the receiving Party's confidentiality obligations under this Agreement);
- 16.3.2 is known without restriction to the receiving Party at the time of disclosure without breach of any obligation of confidentiality;
- 16.3.3 becomes known to the receiving Party without restriction from an independent source having the right to convey it;
- 16.3.4 is shown to the reasonable satisfaction of the originating Party to have been generated independently by the receiving Party;
- 16.4 Nothing herein shall prevent the disclosure of information by the receiving Party to the extent required by applicable law or by the regulations of any stock exchange or regulatory authority to which such Party is subject or pursuant to any order of court or other competent authority or tribunal PROVIDED THAT:
- 15.4.1 the receiving Party first gives the other Party, where possible, the opportunity to make the necessary disclosure;

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15.4.2 where the receiving Party is required to make the disclosure itself, the disclosure made is the minimum required and is made under maximum possible constraints of confidentiality; and

15.4.3 the other Party is provided with full information on the disclosure made

16.5 This Clause shall not apply to the disclosure of any Proprietary Information contained in any Goods to the extent that such disclosure is reasonably necessary for the exercise by the Customer of the right referred to in Clause 6.3.

16.6 The Parties acknowledge that damages would not be an adequate remedy for any breach of this Clause and that (without prejudice to any other rights or remedies that the Parties may be entitled to as a matter of law), both Parties will be entitled to the remedies of injunction, specific performance, and other equitable relief to enforce the provisions of this Clause and no proof of special damages shall be necessary for the enforcement of the provisions of this Clause 15.

17 TERMINATION FOR BREACH

17.1 Without prejudice to any rights of action or remedy which have accrued or shall accrue, either Party (the "Terminating Party") may at any time by written notice terminate the Contract if;

17.1.1 the other Party is in breach of any material obligation under the Contract and if the breach is capable of remedy, the other Party has failed to remedy such breach within thirty (30) days of written notice to that Party; or

17.1.2 any distress, execution or other process is levied upon any of the assets of the other Party; or

17.1.3 the other Party enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company) or if a petition is presented to court, or if a receiver and/or manager, administrative receiver or administrator is appointed in respect of the whole or any part of the other Party's undertaking or assets; or

17.1.4 the other Party ceases or threatens to cease to carry on its business; or

17.1.5 the financial position of the other Party deteriorates to such an extent that in the opinion of the Terminating Party the capability of the other Party adequately to fulfil its obligations under the Contract has been placed in jeopardy.

17.2 Where Omni-ID terminates the Contract under this Clause, the Customer shall within seven (7) days pay to Omni-ID: (i) all outstanding payments invoiced by Omni-ID under the Contract at the date of termination; (ii) in addition a fair and reasonable price for work done or in progress but not invoiced for at the date of termination; (iii) all costs (including overheads) and liabilities incurred by Omni-ID arising out of or resulting from termination, including but not limited to suppliers' and sub-contractors' cancellation charges; and (iv) a sum in respect of the profits which Omni-ID would have made under the Contract but for its termination.

17.3 The provisions of Clauses 4.2, 5.6, 6, 8,12, 14, 15, 18, 23 and 24 shall survive termination of this Contract together with any other provision which by the nature of its terms is implicitly intended to survive termination.

18 FORCE MAJEURE

18.1 Omni-ID shall not be liable for any failure to perform, or any delay in performing, its obligations if the failure or delay is due directly or indirectly to any cause beyond the reasonable control of Omni-ID, which shall include but not be limited to the following:

18.1.1 any act of God, terrorism, fire, flood, explosion, accident, endemic, war, governmental actions, strikes, civil disturbance, strike or lock-out, or emergency;

18.1.2 any major plant or equipment failure which results in closure of a facility; or

18.1.3 the postponement of any trial or test as a result of adverse weather or unsafe conditions.

18.2 In the event of failure or delay arising from such circumstances, Omni-ID will provide full details to the Customer and shall take all reasonable steps to mitigate the effect of the delay. Except for Condition 5 hereunder, performance of the Contract shall be suspended for such time as the delay continues.

18.3 either Party may terminate this Contract upon written notice to the other Party and if the event of Force Majeure lasts more than 180 days or renders the continuation or completion of the Contract impossible. In such event the Parties shall, subject to the provisions of Clauses 6 (Intellectual Property Rights) and 15 (Commercial Confidentiality), be released from all obligations under the Contract and the Customer shall pay to Omni-ID within seven (7) days: (i) all outstanding payments invoiced by Omni-ID under the Contract at the date of termination; and (ii) in addition a fair and reasonable price for work done or in progress but not invoiced for at the date of termination.

19 ASSIGNMENT

19.1 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of Omni-ID.

19.2 Omni-ID may assign the Contract or any part of it to any person, firm or company.

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20 PUBLICITY

- 20.1 Neither the Customer nor Omni-ID shall without the prior written consent of the other Party; (i) make use of the other Party's name; (ii) make use of the name of any of the other Party's personnel, customers or agents; (iii) make use of any information obtained under the Contract for publicity purposes; or (iv) refer to the other Party or the Contract in any advertisement,

21 DISPUTE RESOLUTION

- 21.1 If any dispute arises out of or in connection with this Contract ("**Dispute**") the Parties undertake that, prior to the commencement of any legal proceedings pursuant to Clause 23, they will seek to have the Dispute resolved amicably by use of an alternative dispute resolution procedure acceptable to both Parties. Either Party will be entitled to initiate the process by written notice to the other.
- 21.2 If the Dispute has not been resolved to the satisfaction of either Party within thirty days of initiation of the procedure pursuant to Clause 19.1 or if either Party fails or refuses to participate in or withdraws from participating in the procedure, then either Party may deal with the Dispute through legal proceedings issued in accordance with Clause 24.

22 EXPORT LICENCES

- 22.1 Omni-ID shall use reasonable endeavours to obtain all necessary UK export or other licences, consents, clearances and/or authorisations (together, the "Export Licences") required in order to sell and export the Goods.
- 22.2 The Customer shall, at its own cost and expense, assist Omni-ID in obtaining an end-user certificate, undertaking or such other information as shall be reasonably required by Omni-ID to pursue any application for Export Licences.
- 22.3 In the event that such Export Licences are not granted or are revoked, then:
- 22.3.1 such event shall be deemed to be a Force Majeure event under Clause 16 and Omni-ID shall have no liability to the Customer for completing the sale of any Goods affected by such Export Licences, or for any loss, expense or damage whatsoever suffered by the Customer; and
- 22.3.2 notwithstanding Clause 16.3, Omni-ID may, by notice in writing to the Customer, immediately terminate this Contract or any part of it relating to the Goods in respect of which the Export Licences have not been granted or have been revoked.

23 NOTICES

- 23.1 A notice given under or in connection with the Contract must be in writing and delivered by hand or sent by first class post or by facsimile [to the Company Secretary at Omni-ID's registered office with a copy to the Commercial Manager at the address set out in Schedule 1 hereto] [or (as the case may be) to the address of the Customer shown in the Contract or to such other address as either Omni-ID or the Customer (as the case may be) may substitute by notice to the other Party.
- 23.2 Notice shall be deemed given:
- 23.2.1 if sent by first class post or international overnight courier: two business days after posting or sending by such courier exclusive of the day of posting or sending;
- 23.2.2 if delivered by hand: on the day of delivery;
- 23.2.3 if sent by facsimile: at the time of transmission, upon the sending Party receiving a transmission receipt confirming the successful transmission of the facsimile.

24 MISCELLANEOUS

- 24.1 No amendment to this Contract shall be effective unless signed on behalf of both Parties.
- 24.2 A person who is not a Party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 24.3 Failure by either Party to enforce, at any time or for any period, any one or more of the terms or conditions of the Contract shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of the Contract.
- 24.4 The Contract constitutes the entire agreement between the parties in connection with its subject matter and neither Party has relied on any representation or promise except as expressly set out in the Contract.
- 24.5 If any provision of these terms and conditions is held by any competent authority to be illegal, void, voidable, invalid, unenforceable or unreasonable in whole or in part it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be affected.

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25 GOVERNING LAW AND JURISDICTION

- 25.1 The Contract shall be governed by and construed in accordance with the laws of the State of New York, United States of America.
- 25.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English Courts PROVIDED THAT each Party shall have the right to enforce a judgment of the English Courts in a jurisdiction in which the other Party is incorporated or in which any assets of the other Party may be situated.