

Terms and conditions for the supply of Products and Services by Texture Jet Ltd v. 28/03/2023

The Customer's attention is particularly drawn to the provisions of clause 12 (Limitation of liability).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in the United States.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.8.

Contract: the contract between the Supplier and the Customer for the supply of Products and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Products and/or Services from the Supplier.

Deliverables: the deliverables set out in the Order produced by the Supplier for the Customer.

Delivery Location: has the meaning given in clause 4.

Force Majeure Event: has the meaning given to it in clause 15.

Products: the products (or any part of them) set out in the Order.

Products Specification: any specification for the Products, including any relevant plans or drawings, that is identified by the Supplier in its applicable statement of works or quote or such variation as is agreed in writing by the Customer and the Supplier.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighboring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Products and/or Services, as set out in the Customer's written acceptance of the Supplier's quotation and/or statement of works.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer.

Supplier: Texture Jet Ltd registered in England and Wales with company number 11930684.

Supplier Materials: has the meaning given in clause 8.1(h).

1.2 Interpretation:

(a) **A person** includes a natural person,

corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its successors and permitted assigns.

(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

(d) Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(e) A reference to **writing** or **written** includes email.

2. Basis of contract

2.1

The Order constitutes an offer by the Customer to purchase Products or Services or both in accordance with these Conditions. The acceptance of any Order is expressly conditioned upon the Customer's consent to these Conditions.

2.2

The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**). The Supplier reserves the right to reject any Order for any reason, or no reason at all, in its sole discretion.

2.3

No interlineations, deletions, modifications or amendments to these conditions shall be binding on the Supplier unless agreed to and accepted in writing by the Supplier, nor shall the Customer's terms and conditions have any legal effect unless accepted by the Supplier in writing. The initiation of performance under the Contract shall indicate the Customer's acceptance of these Conditions.

2.4

Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Products or illustrations or descriptions of the Services contained in the Supplier's website, catalogues, brochures, prospectus, circulars, advertisements, price lists and instructions are issued or published for the sole purpose of giving an approximate idea of the Services and/or Products described in them. They shall not form part of the Contract nor have any contractual force.

2.5

The Supplier will be entitled to adjust agreed prices on the basis of the average change in the cost price of the Products or Services, as set forth in clause 9.4.

2.6

These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.7

Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of thirty (30) Business Days from its date of issue.

2.8

All of these Conditions shall apply to the supply of both Products and Services except where application to one or the other is specified.

3.

Products

3.1

The Products are described in the Products

3.2	<p>Specification.</p> <p>The Supplier reserves the right to amend the Products Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.</p>	instructions for the Products or any relevant instruction related to the supply of the Products.
4.	Delivery of Products	4.6
4.1	The Supplier shall ensure that:	If the Customer fails to take delivery of the Products within three (3) Business Days of the Supplier notifying the Customer that the Products are ready, then
	<ul style="list-style-type: none"> (a) each delivery of the Products is accompanied by a delivery note which shows the date of the Order, the number allocated by the Supplier from its statement of works or quote, component or sample passport showing the work carried out, the type and quantity of the Products (including the code number of the Products, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Products remaining to be delivered; and (b) it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense. 	<ul style="list-style-type: none"> except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Products: (a) delivery of the Products shall be deemed to have been completed at 9.00 am on the third (3rd) Business Day following the day on which the Supplier notified the Customer that the Products were ready; and (b) the Supplier shall store the Products until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
4.2	The Products are to be "Delivered at Place" / DAP at the Supplier's place of business (as DAP is defined by Incoterms 2010) or such other location as may be agreed with the Customer before delivery (Delivery Location) within three (3) Business Days of the Supplier notifying the Customer that the Products are ready. The method and agency of transportation and routing will be designated by the Supplier. In the event the Customer requests alternative shipment or routing, the resulting alternative packing, shipping and transportation charges will be for the Customer's account.	4.7
4.3	Delivery of the Products shall be completed on the completion of loading of the Products at the Delivery Location.	If ten (10) Business Days after the day on which the Supplier notified the Customer that the Products were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Products or charge the Customer for any shortfall below the price of the Products.
4.4	Any dates quoted for delivery of the Products are approximate only, and the time of delivery is not of the essence . The Supplier shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.	4.8
4.5	If the Supplier fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement products of similar description and quality in the cheapest market available, less the price of the Products. Under no circumstances shall the Customer or Customer's customers be entitled to any damages for the Supplier's failure to ship on time, and the Customer agrees to indemnify, defend and hold the Supplier harmless against any costs and expenses related to any claims for lost profits or other consequential damages based on the Supplier's failure to deliver timely. The Supplier shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery	4.9
		As the case may be, the Customer shall in due time undertake preparatory work to ensure that the conditions necessary for (i) the installation of the Products and (ii) the correct operation of any work to be carried out under these Conditions, are fulfilled. The Customer shall be responsible for transporting the Products to the relevant site and shall ensure, to this effect, that such site is appropriately prepared to receive the Products and start the installation work.
		5.
		Quality of Products
5.1	The Supplier's warranty is as set forth in its Limited Warranty, made available at the Texture Jet website (www.texturejet.com).	
5.2	The warranty will commence upon delivery and acceptance of the products as detailed in the product specification	
5.3	The Supplier does not authorize the Customer to provide any other warranties to end users beyond that granted in the Supplier's Limited Warranty. The Customer shall indemnify, defend and hold the Supplier and any affiliated companies harmless against any claims made by third parties based on any representation or warranty made by the Customer that differs in any way from the Supplier's Limited Warranty.	
6.		Risk and Security Interest
6.1	The risk in the Products shall pass to the Customer on completion of delivery.	
6.2	In order to protect and secure payment of all debts due and owing from the Customer and until the Supplier has been paid in full, the Customer hereby grants to the Supplier a security interest in the Products, and all	

6.3	proceeds and all accounts receivables resulting from the sale of the Products. In connection therewith, the Customer hereby authorizes the Supplier to take all necessary steps to file such financing statements and exhibits with the proper authorities, including the filing of a UCC-1 financing statement. Until the Customer has paid for the Products in full, the Customer shall not pledge, mortgage, encumber, or create or suffer to exist a security interest in the Products in favor of any person other than the Supplier unless written approval of such other security interest is given by the Supplier. Additionally, the Customer agrees to keep the Products insured to their full value until payment is received by the Supplier. In the event the Customer sells the Products to a third party before payment in full is received by the Supplier, the Customer agrees to secure its security interest in the Products at the time of sale to its customer in order to protect the Supplier's interests to the greatest extent possible.	<ul style="list-style-type: none"> (d) limited to all necessary tools, equipment, material, supplies, machinery, instruments, electricity, in order for the Supplier and its personnel to perform the obligations under the Contract; (e) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects; (f) prepare the Customer's premises for the supply of the Services, notably obtain in due time work permits, official entries, exits, and general access to the relevant site; (g) obtain and maintain all necessary licenses, permissions and consents which may be required for the Services before the date on which the Services are to start; (h) comply with all applicable laws, including health and safety laws; (i) keep all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorization; and (j) comply with any additional obligations as set out in the Service Specification and the Products Specification.
7.	Supply of Services	
7.1	The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.	
7.2	The Supplier shall use all reasonable endeavors to meet any performance dates for the Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. The Supplier shall not be responsible for any delays, nor shall it be liable for any loss or damages resulting from such delays regardless of whether such delays are due to force majeure or otherwise. Under no circumstances shall the Customer or the Customer's customers be entitled to any damages for the Supplier's failure to ship on time, and the Customer agrees to indemnify, defend and hold the Supplier harmless against any costs and expenses related to any claims for lost profits or other consequential damages based on the Supplier's failure to deliver timely.	
7.3	The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.	
7.4	The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.	
8.	Customer's obligations	
8.1	The Customer shall:	<ul style="list-style-type: none"> (a) ensure that the terms of the Order and any information it provides in the Service Specification and the Products Specification are complete and accurate; (b) co-operate with the Supplier in all matters relating to the Services; (c) provide the Supplier, its employees, agents, consultants, representatives and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services, including but not limited to all necessary tools, equipment, material, supplies, machinery, instruments, electricity, in order for the Supplier and its personnel to perform the obligations under the Contract; (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects; (e) prepare the Customer's premises for the supply of the Services, notably obtain in due time work permits, official entries, exits, and general access to the relevant site; (f) obtain and maintain all necessary licenses, permissions and consents which may be required for the Services before the date on which the Services are to start; (g) comply with all applicable laws, including health and safety laws; (h) keep all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorization; and (i) comply with any additional obligations as set out in the Service Specification and the Products Specification.
8.2		If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any actor omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default), without limiting or affecting any other right or remedy available to it, the Supplier shall, at its own discretion:
		(a) have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
		(b) arrange for storage of its Products, equipment and material necessary to perform its obligations under the Contract at the Customer's risk and expense;
		(c) demand immediate payment of the Contract price;
		(d) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
		(e) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

	<h2>9. Charges and payment</h2>	<p>9.1 The price for Products:</p> <ul style="list-style-type: none"> (a) shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery; and (b) shall be exclusive of any present or future federal, state or Local property, sales, use, excise, license, gross receipts or other taxes or assessments in relation to the Products or the Services, and all costs and charges of packaging, insurance, transport of the Products, which shall be invoiced to the Customer. <p>9.2 The charges for consultancy Services shall be calculated on a time and materials basis:</p> <ul style="list-style-type: none"> (a) the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Order; (b) the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days; (c) the Supplier shall be entitled to charge an overtime rate stated in the Order on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2(b); and (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials. <p>9.3 The charges for other Services will be calculated as stated in the Order.</p> <p>9.4 The Supplier reserves the right to:</p> <ul style="list-style-type: none"> (a) increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding twelve-month period and the first such increase shall take effect on the first (1st) anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index; (b) increase the price of the Products, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Products to the Supplier that is due to: <ul style="list-style-type: none"> (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labor, materials and other manufacturing costs); <p>(ii) any request by the Customer to change the delivery date(s), quantities or types of Products ordered, or the Products Specification; or</p> <p>(iii) any delay caused by any instructions of the Customer in respect of the Products or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Products.</p> <p>9.5 In respect of Products, the Supplier shall invoice the Customer on or at any time after completion of delivery or notice that the Products are ready for collection. In respect of Services, the Supplier shall invoice the Customer on completion or termination of the Services. The Customer shall pay each invoice submitted by the Supplier:</p> <ul style="list-style-type: none"> (a) within thirty (30) days of the date of the invoice; and (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and <p>time for payment shall be of the essence of the Contract.</p> <p>9.7 Payment terms to cover the total amount as shown on the supplied quote are to be made as follows:</p> <ul style="list-style-type: none"> (a) 10% of total quote amount to be invoiced on receipt of order (b) 40% of total quote amount to be invoiced at the point of shipment (c) 50%, remainder of total quote amount to be invoiced on acceptance of product <p>9.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law) as long as acceptance occurs.</p> <p>10. Intellectual property rights</p> <p>10.1 All Intellectual Property Rights in or arising out of or in connection with the Products, design and know-how that is contributed by or for the Supplier in the creation of the Products and/or Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier. The Customer shall not remove or alter indications concerning Intellectual Property Rights and concerning the confidential nature of information from the Products and Services, and any other goods, programs, works, distinctive marks, inventions, designs, models and materials created and/or made available by the Supplier, as the case may be.</p> <p>10.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free license during the term of the Contract or for software embedded in Products then for so long as the Customer is using the Products to use the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Products and Services and the related Deliverables in its business for the use consistent with the way and for the purpose supplied by the Supplier. Logic control or other embedded software may not be used in any way other than as supplied by the Supplier. No license of any logic control, software or end effector is implied except when using with the Product supplied by the Supplier and in accordance with</p>
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	its scope of use, nor is any right to replicate the Products or a material part of them without an express written license being granted by the Supplier on terms that may be agreed separately, either implied or included in this Contract.	
10.3	The Customer shall not sub-license, transfer, assign or otherwise transfer the rights granted by clause 10.2.	
10.4	The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable license to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.	
10.5	In the event the Products and Services are produced by the Supplier in accordance with the Products Specification and the Service Specifications, the Customer shall indemnify the Supplier against all loss, damages, costs and expenses awarded against or incurred by the Supplier in connection with or paid or agreed to be paid by the Supplier in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Supplier's use of the Products Specification or Service Specification.	
10.6	The Supplier makes no warranty concerning the appropriateness of the Products to the purposes for which the Customer or its customers are acquiring same. Moreover, the Supplier makes no warranty that the Products or other intellectual property of the Supplier does not infringe the rights of third parties. If the Supplier infringes the intellectual property rights of such third parties, provided that the Supplier is promptly notified in writing by the Customer, the Supplier, at its option, shall: <ul style="list-style-type: none"> (a) procure the right of the Customer to continue to use the Products; (b) modify the Products so that it becomes non-infringing; (c) replace the Products with non-infringing Products; or (d) remove the Products and refund the Contract price. 	
11.	Confidentiality	
11.1	Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the Products and production information, business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.	
11.2	Each party may disclose the other party's confidential information: <ul style="list-style-type: none"> (a) to its employees, officers, representatives, subcontractors, funders or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors, funders or advisers to whom it discloses the other party's confidential information comply with this clause 11; and (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. 	
11.3	Neither party shall use the other party's confidential information for any purpose other than to perform its	
		obligations under the Contract.
11.4		Each party may disclose such confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause shall survive termination of the Contract.
12.	Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.	
12.1	Nothing in these Conditions shall limit or exclude the Supplier's liability for: <ul style="list-style-type: none"> (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; and (b) fraud or fraudulent misrepresentation. 	
12.2	Subject to clause 12.1: <ul style="list-style-type: none"> (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss or corruption of data or any indirect or consequential loss arising under or in connection with the Contract; and (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the higher of: <ul style="list-style-type: none"> (i) the invoiced value of the Products and /or Services relevant; and (ii) the amount recovered by the Supplier under its policy of insurance in this respect. 	
12.3	Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire three (3) months from that date but subject to notification having been served within the Warranty Period. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.	
12.4	This clause 12 shall survive termination of the Contract.	
13.	Termination	
13.1	Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if: <ul style="list-style-type: none"> (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within three (3) Business Days after receipt of notice in writing to do so; (b) the other party 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 in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (e) the other party disregards any applicable statute, law, ordinance, code, order, rule, regulation, proclamation or other governmental requirement

13.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment or if the Customer has been fully transferred to a third party without consent of the Supplier.

13.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Products under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(d), or the Supplier reasonably believes, in its sole judgement, that the Customer is about to become subject to any of them.

14. Consequences of termination

14.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Products supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables or Products which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

14.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of

termination.

14.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

15. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control, including but not limited to, Acts of God, flood, drought, earthquake or other natural disaster; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations; nuclear, chemical, biological contamination or sonic boom, epidemic or pandemic; any law or any action taken by a Government or a public authority including without limitation imposing an export or import restriction, quota or prohibition; and the collapse of buildings, fire, explosion or accident (a **Force Majeure Event**). The Customer shall use all reasonable effort to mitigate the effect of a Force Majeure Event on the performance of its obligations. If a Force Majeure Event prevents, hinders or delays the Supplier or Customer's performance of their obligations for a continuous period of more than six (6) months, the Supplier may terminate the contract immediately by giving written notice to the Customer.

16. General

16.1 Assignment and other dealings

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

16.2 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to admin@texturejet.com or such other address notified from time to time by the Supplier; or
 - (iii) sent by email to the address provided by the Customer to the Supplier at the Commencement Date or such other address notified from time to time by the Customer.
- (b) Any notice shall be deemed to have been received:

(i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and

(ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second (2nd) Business Day after posting or at the time recorded by the delivery service; and

(iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 16.2(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt. Either a delivery receipt or a reply/other confirmation of receipt is required for an email to be effectively served. If not so confirmed within two (2) Business Days then it shall be resent by another means.

(c) This clause 16.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16.3 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 16.3 shall not affect the validity and enforceability of the rest of the Contract.

16.4 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorize either party to make or enter into any commitments for or on behalf of the other party.

16.6 Entire agreement.

(a) The Contract 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.

(b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

16.7 Third party rights.

(a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contract.

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

16.8 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorized representatives).

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 the state of Illinois in the United States, without reference to conflict of laws principles. The application of the United Nations Convention on the International Sale of Goods is expressly excluded.

16.10 Jurisdiction. Each party irrevocably agrees that the state and federal courts located in Chicago, state of Illinois, 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.