ENSERA DESIGN (a trading name of KINNEIR DUFORT DESIGN LIMITED)

TERMS AND CONDITIONS - SUPPLY OF PRODUCTS AND SERVICES

1. **Definitions**

"**Client**" means the person or entity who purchases the Services and/ or Products from Ensera Design.

"**Client Background IPRs**" means any pre-existing Intellectual Property, including information, techniques, know-how, software and materials (regardless of the form or medium in which they are disclosed or stored) provided by the Client to Ensera Design for use in connection with this Contract.

"Ensera Design Background IPRs" means any intellectual property Rights owned or controlled by Ensera Design before the Commencement Date or developed independently of the Services.

"Commencement Date" has the meaning given in Clause 2.4.

"Conditions" means these terms and conditions as amended from time to time in accordance with Clause 14.5.

"Contract" means a contract for the purchase by the Client of Services and/ or Products.

"Data Protection Laws" means any applicable laws and regulations in any relevant jurisdiction relating to the use or processing of personal data including: (i) the UK GDPR; (ii) the Data Protection Act 2018 ("DPA") and the applied GDPR as defined in the DPA; and (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003); in each case, as updated, amended or replaced from time to time.

"Intellectual Property Rights" means patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, 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.

"Ensera Design" means Ensera Design (a trading name of Kinneir Dufort Design Limited) registered in England and Wales with company number 1311968, and whose registered address is 5 Host Street, Bristol BS1 5BU.

"Product" means the prototype, model or small batch production supplied by Ensera Design to the Client using the designs developed by Ensera Design as part of the Services, or any such design provided by the Client and/ or included in the Proposal.

"**Product Specification**" means the description or specification for the Services provided in the Proposal by Ensera Design to the Client.

"Proposal" means Ensera Design's invitation to supply Services and/or Products to the Client.

"Order" means the Client's offer to purchase the Services and/ or Products in accordance with the Proposal and these Conditions.

"Services" means the Ensera Design activity and the Ensera Design material which Ensera Design is to supply to the Client in accordance with these Conditions as more particularly set out in the Proposal.

"**Service Specification**" means the description or specification for the Services provided in the Proposal by Ensera Design to the Client.

2. Basis of the Contract

2.1 All Proposals are made by Ensera Design, and all Orders accepted are accepted on these Conditions and on no others. These Conditions, which supersede any earlier sets of conditions issued as published by Ensera Design, override and exclude any other terms and conditions stipulated or referred to by the Client and any course of dealing established between Ensera Design and the Client.

2.2 Proposals may be withdrawn at any time before receipt of the Client's Order and shall be deemed to be withdrawn if no Order is received within the time stated upon the Proposal or, if no time is stated, within 30 days from the date of Proposal.

2.3 The Order constitutes an offer by the Client to purchase Products and/or Services in accordance with the Proposal and these Conditions.

2.4 The Order shall only be deemed to be accepted when Ensera Design issues written acceptance of the Order at which point and on which date a Contract consisting of these Conditions and the terms set out in the Proposal shall come into existence ("**Commencement Date**").

2.5 Any samples, drawings, descriptive matter or advertising issued by Ensera Design and illustrations or descriptions of the Services and/or Products contained in the Ensera Design's case studies, creds or published on its website are 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 or have any contractual force.

2.6 Ensera Design shall have the right to reject any Order. Each Order accepted by Ensera Design shall constitute a separate Contract for the purchase of Services and/ or Products (as the case may be).

2.7 No Order which has been accepted by Ensera Design may be cancelled by the Client except with the prior agreement in writing and on terms that the Client shall indemnify Ensera Design in full against all loss (including loss of profit), costs (including the costs of all labour and raw materials), damages, charges and expenses incurred by Ensera Design as a result of cancellation unless otherwise agreed.

2.8 These Conditions shall apply to the:

(a) supply of both Services and Products except where application to one or the other is specified; and

(b) Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. Services

3.1 Ensera Design shall supply the Services to the Client in all material respects in accordance with the Service Specification.

3.2 Ensera Design shall use all reasonable endeavours to meet any performance dates for the Services specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

3.3 Ensera Design 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 Ensera Design shall notify the Client in any such event.

3.4 Ensera Design warrants to the Client that the Services will be provided using reasonable care and skill.

4. Products

4.1 Ensera Design warrants that on delivery, the Products shall:

(a) conform with the Product Specification; and

(b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by Ensera Design.

4.2 Ensera Design does not warrant that any Products are free from any defect or meets with any standard or specification other than those expressly set out in the Product Specification.

4.3 All Orders for Products shall be placed by the Client. The Client shall be responsible to Ensera Design for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Client and for giving Ensera Design any necessary information relating to the Products to enable an accurate Product Specification.

4.4 Where the Products are to be delivered by Ensera Design, the Client must give a desired delivery date (provided that such desired delivery date shall not create any obligation on Ensera Design to deliver the Products on that date), details of the delivery address, telephone number and postcode, within a sufficient time to enable Ensera Design to perform the Contract in accordance with its terms.

4.5 The quality and description of, and the specification for, the Products and the quantity shall be as set out in the Product Specification within the Proposal (if accepted by Ensera Design).

4.6 Title to the Products shall not pass to the Client until Ensera Design receives payment in full in cleared funds for the Products and any other Products and/ or Services that

Ensera Design has supplied to the Client in respect of which payment has become due, in which case title to the Products shall pass at the time of payment of all such sums.

5. Client's Obligations

5.1 The Client shall:

(a) ensure that the terms of the Proposal and any information it provides in the Service Specification and the Product Specification are complete and accurate;

(b) co-operate with Ensera Design in all matters relating to the Services and/ or Products;

(c) provide Ensera Design with such information and materials as Ensera Design may reasonably require in order to supply the Services and/ or Products, and ensure that such information is complete and accurate in all material respects;

(d) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

(e) keep all materials, equipment, documents and other property of Ensera Design ("**Ensera Design Materials**") at the Client's premises in safe custody at its own risk, maintain Ensera Design Materials in good condition until returned to Ensera Design, and not dispose of or use Ensera Design Materials other than in accordance with Ensera Design's written instructions or authorisation; and

(f) comply with any additional obligations as set out in the Service Specification and the Product Specification.

5.2 If Ensera Design's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("**Client Default**"):

(a) without limiting or affecting any other right or remedy available to it, Ensera Design shall have the right to suspend the supply of the Services and/ or Products until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays Ensera Design's performance of any of its obligations;

(b) Ensera Design shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Ensera Design's failure or delay to perform any of its obligations as set out in this Clause 5.2; and

(c) the Client shall reimburse Ensera Design on written demand for any costs or losses sustained or incurred by Ensera Design arising directly or indirectly from the Client Default.

6. Charges and Payment

Charges

6.1 The charges for Services:

(a) shall be as set out in the Proposal, and where stated to be calculated on a time and materials basis, shall be calculated in accordance with the Ensera Design's daily fee rates; and

(b) Ensera Design shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom Ensera Design engages in connection with the Services and required by Ensera Design for the performance of the Services, and for the cost of any materials.

6.2 The charges for Products:

(a) shall be the charges set out in the Proposal; and

(b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Products.

6.3 Where the Proposal includes cost estimates, Ensera Design will review the requirements and confirm the cost with the Client before starting the next phase.

Invoices and payment

6.4 For new Clients, unless otherwise agreed, 30% of the charges is payable, in full and in cleared funds to a bank account nominated in writing by Ensera Design, on or before the Commencement Date.

6.5 Notwithstanding Clause 6.4, unless agreed otherwise, Ensera Design shall invoice the Client monthly in arrears. The Client shall pay each invoice submitted by Ensera Design within 30 days of the date of the invoice, in full and in cleared funds to a bank account nominated in writing by Ensera Design.

6.6 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Ensera Design to the Client, the Client shall, on receipt of a valid VAT invoice from Ensera Design, pay to Ensera Design such additional amounts in respect of VAT as are chargeable on the supply of the Services and/ or Products at the same time as payment is due for the supply of the Services and/ or Products.

Services will be zero-rated for VAT when invoicing clients that are based abroad, i.e. no VAT will be payable.

6.7 If the Client fails to make any payment on the due date then without prejudice to any other right or remedy available to Ensera Design, Ensera Design shall be entitled to charge the Client interest (both before and after any judgement) on the amount unpaid, at the rate of 5 per cent per annum over the Bank of England base rate for the time

being (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) until payment is made.

6.8 If the Client delays, suspends or cancels the Services and/or Products, Ensera Design shall be entitled to charge the Client for all costs and expenses reasonably incurred by Ensera Design up to the effective date of the delay, suspension or cancellation, including but not limited to fees, materials and third-party costs already committed to.

Where such delay, suspension or cancellation occurs with four (4) weeks' notice or less, Ensera Design shall also be entitled to recover the costs arising from Ensera Design's inability to reallocate staff or resources, that had been committed to the Services and/or Products, to alternative work during the relevant period.

The Client acknowledges and agrees that, following any delay or suspension, Ensera Design cannot guarantee that the same project team or personnel will remain available when the Services recommence.

Such charges shall be invoiced to the Client and shall be payable in accordance with the payment terms set out in these Conditions.

7. Intellectual Property Rights

7.1 All Intellectual Property Rights in or arising out of the Services and/ or Products (other than Intellectual Property Rights in any Client Background IPRs) shall be exclusively owned by Ensera Design and shall transfer to Client automatically with immediate effect as soon as payment for the Services and/ or Products to which those Intellectual Property Rights relate has been received in full in cleared funds by Ensera Design pursuant to Clause 6. To the extent that such Intellectual Property Rights do not automatically vest in the Client pursuant to this clause, Ensera Design shall, following a written request, enter into a confirmatory assignment with the Client on Ensera Design's standard terms, confirming such ownership by the Client. In respect of any registrable Intellectual Property Rights, if it is a requirement of any applicable intellectual property office, that Ensera Design signs certain official documentation which is necessary in order to register the Client as the applicant or owner of such Intellectual Property Rights, then Ensera Design shall use reasonable efforts to do so, at the Client's expense. Notwithstanding the foregoing, Ensera Design shall retain a fully paid-up, non-exclusive, royalty-free, irrevocable licence to use images and descriptions of the Services and/or Products for its own portfolio, marketing, credentials and promotional purposes. The Client grants Ensera Design a fully paid-up, non-exclusive, royalty-free non-transferable irrevocable licence to copy and modify any Client Background IPRs during the term of the Contract for the purpose of providing the Services and/ or Products to the Client.

7.2 Where the Proposal specifies Ensera Design Background IPRs (being any pre-existing Intellectual Property Rights owned by or licensed to Ensera Design prior to the Commencement Date) to be incorporated in the Products, Ensera Design grants the Client a fully paid-up, non-exclusive, royalty-free non-transferable irrevocable licence to use the Ensera Design Background IPRs for the purposes specified in the proposal.

8. **Data Protection**

8.1 The parties shall comply at all times with Data Protection Laws during the term of this Contract.

9. **Liability and remedies**

9.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

(a) death or personal injury caused by negligence;

(b) fraud or fraudulent misrepresentation; and

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

9.2 Ensera Design shall not be liable to the Client for any loss or damage (whether for loss of profit or indirect or consequential loss), costs, expenses or other claim for compensation whatsoever:

(a) which arises out of or in connection with the supply of the Services or the Products or their resale by the Client; or

(b) from any Client material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or arising from their late or non-arrival or any other act or omission of the Client.

9.3 Ensera Design has not knowingly infringed any Intellectual Property Rights of any third party but does not warrant or give any assurance to the Client that any design of or relating to the Products does not infringe any Intellectual Property Rights of any third party.

9.4 Subject to Clause 9.1, the total liability of Ensera Design in respect of a Contract shall not exceed the charges paid pursuant to Clause 6 under that Contract. Ensera Design's total liability includes: liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with any Contract.

9.5 Subject to Clause 9.1, the express undertakings and warranties given by the parties in these Conditions are in lieu of all other warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these are excluded to the fullest extent permitted by law.

10. **Indemnity**

The Client shall indemnify and keep Ensera Design indemnified against all costs, expenses, damages and demands incurred by Ensera Design in respect of any alleged infringement of any third party's rights (including Intellectual Property Rights) arising out of or in connection with the Client’s materials, instructions or specifications provided to Ensera Design.

11. **Termination**

11.1 Without prejudice to any right or remedy Ensera Design may have against the Client for breach or non-performance of a Contract, Ensera Design may terminate a Contract and, if it so elects at its sole discretion, any other Contracts in force between Ensera Design and the Client with immediate effect by giving the Client written notice, on or at any time after the happening of any of the following events:

(a) if the Client commits a material breach of any of the terms and conditions set out in the Contract provided that where such breach is capable of remedy the Client has been advised in writing of the breach and has not rectified it within 30 days of receipt of such advice.

(b) the passing by the Client of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Client or the dissolution of the Client;

(c) the making of an administration order in relation to the Client or the appointment of a receiver or an administrative receiver over, or the taking possession or sale by an encumbrancer of, any of the Client's assets

(d) the Client making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally;

(e) on the Client ceasing to carry on business at any time for 30 consecutive days;

(f) upon the Client for any reason whatsoever being substantially prevented from performing or becoming unable to perform its obligations under the Contract.

12. **Consequences of termination**

12.1 All rights and obligations of the parties shall cease to have effect immediately upon termination of the Contract except that termination shall not affect: (a) the accrued rights and obligations of the parties at the date of termination; and (b) the continuance in force of any provision of the Contract which expressly or by implication is intended to continue in force on or after termination, including without limitation Clauses 4.6, 7, 9, 10, 12, 14.6, 14.7 and 15.

12.2 Upon termination of the Contract for any reason: (a) all documentation, catalogues, prototypes, samples and price lists issued by Ensera Design and in the possession of the Client are to be promptly returned to Ensera Design; and (b) the Client shall pay Ensera Design for all Services performed and Products delivered, together with all expenses and costs committed by Ensera Design, up to the effective date of termination.

13. **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 results from events, circumstances or causes beyond its reasonable control. If such delay or failure continues for a period of 90 days or more, either party may terminate the Contract by giving 14 days' written notice to the other party, and on such termination

the Client shall pay Ensera Design for all Services and/or Products delivered up to the date of termination.

14. General

14.1 Notices

Any notice to a party under these Conditions shall be in writing signed by or on behalf of the party giving it and shall, unless delivered to a party personally, be left at, or sent by prepaid first class post, prepaid recorded delivery to the address of the party's principal place of business.

14.2 Invalidity

To the extent that any provision or part-provision of these Conditions is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of these Conditions; it shall not affect the enforceability of the remainder of these Conditions nor shall it affect the validity, lawfulness or enforceability of that provision or part-provision in the rest of the Conditions or any other jurisdiction.

14.3 Releases and waivers

(a) Any party may, in whole or in part, release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right granted to it in the Contract by any other party or parties without in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed.

(b) No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under the Contract or otherwise.

14.4 Assignment

The Contract shall be binding on and enure for the benefit of the successors in title of the parties but, shall not be assignable by the Client without the prior written consent of Ensera Design. Ensera Design may assign or transfer the Contract (in whole or in part) to any affiliate or in connection with a merger, reorganisation, or sale of all or substantially all of its assets without the Client’s consent. In addition, a party to the Contract may not hold the benefit of the Contract or any rights under it on trust for any third party or parties.

14.5 Variation

No purported variation of these Conditions shall be effective unless it is in writing and signed by or on behalf of each of the parties.

14.6 Non-Solicitation

The Client agrees that it will neither on its own account or in partnership or association with any person, firm, company or organisation or otherwise and whether directly or indirectly during or for a period of 6 months from termination of this Contract solicit or

entice away any Ensera Design employee. Ensera Design reserves the right to charge the Client a recruitment fee of 25% of the gross annual salary, should any member of Ensera Design staff commence employment with the Client within 6 months of termination of this Contract.

14.7 Confidentiality

Notwithstanding any confidentiality agreement entered into between Ensera Design and the Client, each party undertakes that it shall not at any time disclose to any person any confidential information or material concerning the business, affairs, customers, clients or suppliers of the other party without the written consent of the other party, except: (a) to the extent required by law, regulation, or order of a court or competent authority; (b) to its professional advisers, officers, employees and contractors who need to know such information for the purposes of exercising the party's rights or performing its obligations under the Contract, provided such persons are subject to equivalent confidentiality obligations; or (c) where such information has entered the public domain other than through the receiving party's breach of this clause.

14.8 Exclusion of third party rights

Unless expressly provided in this Contract, no term of this Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

14.9 Entire Agreement

This Contract sets out the entire agreement and understanding between the parties in respect of the subject matter of this Contract.

The Client acknowledges that it has entered into each Contract in reliance only upon the representations, warranties and promises specifically contained or incorporated in this Contract and, save as expressly set out in this Contract, Ensera Design shall have no liability in respect of any other representation, warranty or promise made prior to the date of the Contract unless it was made fraudulently.

15. **Governing Law and Jurisdiction**

15.1 These Conditions shall be governed by and construed in accordance with English law.

15.2 Each of the parties irrevocably submits for all purposes in connection with these Conditions and each Contract to the exclusive jurisdiction of the courts of England.