



**FREDERICK CROWTHER & SON LIMITED**

**t/a CROMAR**

**Terms and Conditions**





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SCHEDULE 1 – ORDER ACKNOWLEDGEMENT FORM



These terms and conditions are incorporated into the agreement with each of CROMAR's customers.

These terms and conditions apply to all contracts between CROMAR and its customers for the supply of its Product(s). CROMAR contracts upon these terms and conditions only and any printed or other terms that any customer seeks to incorporate or impose shall not apply. These terms and conditions shall not be modified without CROMAR's written agreement.

The agreement between CROMAR and a customer is made when the customer accepts CROMAR's Order Acknowledgement Form, a pro forma version of which is at Schedule 1. No order shall be deemed to have been accepted by CROMAR (nor any contract made between the customer and CROMAR) unless and until both the customer and CROMAR each have a copy of the Order Acknowledgement Form relating to the order.

All contracts of sale are only accepted by CROMAR subject to these terms and conditions to the exclusion of all other terms, conditions, representations or warranties (unless otherwise agreed in writing by CROMAR).

## **PARTIES**

- (1) **FREDERICK CROWTHER & SON LIMITED t/a CROMAR**, a company incorporated and registered in England and Wales with company number **00554430**, whose registered office is at 23 Rastrick Common Brighouse West Yorkshire HD6 3DR ("**CROMAR**"); and
- (2) The customer whose name and address is set out in the Order Acknowledgement Form (the "**Customer**")

## **BACKGROUND**

- (A) CROMAR is a manufacturer of swarf conveyors, filtration solutions and swarf handling equipment to the engineering, aerospace, rail and machine tool industries. It also offers conveyor spare parts and a conveyor repairs service.
- (B) The Customer has placed an order for the Product(s) described by CROMAR in its Order Acknowledgement Form relating to such order.
- (C) This Agreement sets out the terms and conditions on which such Product(s) are supplied by CROMAR to the Customer.



**NOW IT IS HEREBY AGREED** as follows:

## **1. INTERPRETATION**

1.1 The definitions set out in this clause shall apply to this Agreement:

**"Agreement"** means this agreement, the introduction section above and any schedules to it.

**"Affiliate"** means in relation to either party, each and any Subsidiary or Holding Company of that party and each and any Subsidiary of a Holding Company of that party.

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**"Business Hours"** means the period from 9.00am to 5.00pm on any Business Day.

**"Confidential Information"** means information of commercial value, in whatever form or medium, disclosed by one party to the other party in connection with this Agreement, including commercial or technical know-how, drawings, technology, information pertaining to business operations and strategies, information pertaining to customers, pricing and marketing and, for clarity, including (in the case of CROMAR's information) information relating to any of its products or solutions.

**"Data Protection Legislation"** means the UK GDPR (as defined in section 3(10) of the Data Protection Act 2018), the Data Protection Act 2018, and all other applicable laws and regulations relating to the processing of personal data and privacy.

**"Delivery Date"** means the estimated delivery date set out in the Order Acknowledgement Form or a despatch note, or such other date as the parties may agree in writing from time to time.

**"Delivery Location"** means the premises nominated by the Customer for the delivery of the Product(s) as set out in the Order Acknowledgement Form or a despatch note or such other premises as the parties may agree in writing from time to time.

**"Documents"** means the operating manuals, user instruction manuals, user guides, technical literature and all other related materials in human-readable or machine-readable forms, if applicable, to be supplied by CROMAR to the Customer relating to the Product(s).

**"Holding company"** means a "holding company" as defined in section 1159 of the Companies Act 2006.



**"Intellectual Property Rights"** means patents, utility models, rights to inventions, copyrights and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (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.

**"Losses"** means all liabilities, damages, losses (including loss of profits, loss of business, loss of reputation, loss of cost savings and loss of opportunity), fines, expenses and costs (including all interest, penalties, legal costs).

**"Order Acknowledgement Form"** means CROMAR's Order Acknowledgement Form, a version of which is at Schedule 1.

**"Payment Date"** means the date the Customer shall pay CROMAR as set out in the Order Acknowledgement Form.

**"Personal Data"** means personal data which is subject to protection under the Data Protection Legislation.

**"Price"** means the price to be paid for the Product(s) as set out in the Order Acknowledgement Form.

**"Product(s)"** means the product(s) which the Customer is purchasing as specified in the Order Acknowledgement Form.

**"Subsidiary"** means a "subsidiary" as defined in section 1159 of the Companies Act 2006.

**"Testing and Installation Charges"** means those charges for installing and testing the Product(s) as set out in the Order Acknowledgement Form, if applicable, or elsewhere agreed between then parties.

**"Warranty"** means the warranty given to the Customer by CROMAR in accordance with clause 5.1 below.

**"Warranty Period"** means the period of 12 months after delivery of the product, or otherwise agreed, and during which any warranty claim must be notified to CROMAR in writing in order for such warranty claim to be validly made.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a **party** includes its successors and permitted assigns.



- 1.4 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that legislation or legislative provision.
- 1.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms
- 1.6 A reference to **writing** or **written** excludes fax but not email.

## **2. SALE OF CROMAR PRODUCTS**

- 2.1 Any order placed by the Customer to purchase the Product(s) constitutes an offer by the Customer to purchase the Product(s) in accordance with the terms and conditions of this Agreement. Any quotation for the Product(s) given by CROMAR shall not constitute an offer and shall not form part of the contract for the sale and purchase of the Product(s).
- 2.2 CROMAR shall sell and the Customer shall buy the Product(s) on the terms and conditions of this Agreement, which shall apply 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.
- 2.3 Any samples, drawings, description or advertising provided to the Customer by or on behalf of CROMAR and any descriptions or illustrations contained in CROMAR's catalogues or brochures (whether digital or otherwise) are provided for the sole purpose of giving an approximate idea of the Product(s) referred to in them. They shall not form part of the contract for the sale and purchase of the Product(s) nor have any contractual force.
- 2.4 Upon receipt of the Customer's order to purchase the Product(s), CROMAR may (but shall not be obliged to) issue an Order Acknowledgement Form in respect of such order. The Customer must ensure that the Order Acknowledgement Form is complete and accurate. No order shall be deemed to have been accepted by CROMAR (nor any contract made between the Customer and CROMAR) unless and until both the Customer and CROMAR each have a copy of the Order Acknowledgement Form relating to the order.

## **3. DOCUMENTS**

CROMAR shall provide to the Customer copies of the Documents containing sufficient up-to-date information to enable the proper and effective use of the



Product(s) by the Customer. The Customer shall not make any modification to or otherwise alter the Documentation.

#### **4. PAYMENT, DELIVERY AND RETENTION OF TITLE**

- 4.1 The Customer shall pay the Price on the Payment Date.
- 4.2 Payment shall be made into CROMAR's Bank Account as nominated in writing by CROMAR from time to time.
- 4.3 The Price:
- (a) excludes amounts in respect of VAT, where applicable, which the Customer shall pay to CROMAR in addition to the Price at the prevailing rate, subject to the receipt of a valid VAT invoice;
  - (b) includes all costs of packaging, delivery and carriage where indicated in the Order Acknowledgement Form (generally separate pricing will be agreed for this);
  - (c) any Testing and Installation Charges, as may be specified in the Order Acknowledgement Form, or elsewhere.
- 4.4 CROMAR shall issue the Customer with an invoice for the Price plus VAT at the prevailing rate (if applicable) at the same time it sends the Customer the Order Acknowledgement Form or any time thereafter.
- 4.5 CROMAR shall ensure that the invoice includes the date of the sale, the invoice number, the Customer's order number, CROMAR's VAT registration number, and any supporting documentation that the Customer may reasonably require. Unless otherwise agreed in writing, the Customer shall pay the invoice, no later than the Payment Date or, if no Payment Date is specified in the Order Acknowledgement Form, no later than 30 days after the date on which the invoice was sent to the Customer. CROMAR will charge interest at the rate of 4% per annum above the base rate of National Westminster Bank plc from time to time in force, from the due date until the date of actual payment, whether before or after judgment and shall in default of payment of its invoice be entitled to suspend work on the Product(s), or cancel the order.
- 4.6 CROMAR shall use its reasonable endeavours to deliver the Product(s) and Documentation to the Customer at the Delivery Location specified in the despatch note that it shall send to the Customer.



- 4.7 If the Customer fails to take delivery of the Product(s) on the Delivery Date, CROMAR may charge reasonable costs of storage from the Delivery Date until delivery is completed. If thirty Business Days after CROMAR has notified the Customer that the Product(s) are ready for delivery the Customer has still not taken nor accepted actual delivery of the Product(s), then CROMAR may resell or otherwise dispose of part or all of the Product(s) and, without limiting its rights and after deducting reasonable costs and expenses related to storage (including insurance) and selling, account to the Customer for any excess over the Price paid by the Customer for the Product(s) or charge the Customer for any shortfall below the Price paid by the Customer for the Product(s).
- 4.8 The Delivery Date is approximate only, and the time of delivery is not of the essence. CROMAR shall not be liable for any delay in delivery of the Product(s) that is caused by:
- (a) events, circumstances or causes beyond its reasonable control; or
  - (b) the Customer's failure to provide CROMAR with adequate delivery instructions, or technical information and/or drawings required to fulfil the order, or any other instructions that are relevant to the sale of the Products.
- 4.9 Delivery is completed on the completion of the unloading of the Product(s) at the Delivery Location.
- 4.10 On delivery of the Product(s) to the Delivery Location, the Customer shall sign an acknowledgement of receipt.
- 4.11 The risk of damage to or loss of the Product(s) shall pass to the Customer on completion of delivery to the Delivery Location.
- 4.12 The title to the Product(s) shall pass to the Customer only on payment in full (in cash or cleared funds) of the Price, together with any VAT. The Customer shall hold the Product(s) on a fiduciary basis as CROMAR's bailee until title passes in accordance with this clause.
- 4.13 Until title passes, the Customer shall:
- (a) store the Product(s) separately from all other goods held by the Customer so that it/they remain readily identifiable as CROMAR's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Product(s);



- (c) not part with possession of the Product(s) nor sell, mortgage, charge or grant any other interest in the Products to any other person, nor purport to do so, without the express written consent of CROMAR;
  - (d) maintain the Product(s) in satisfactory condition and keep it/them insured against all risks for its/their full price from the date of delivery; and
  - (e) notify CROMAR immediately if the Customer becomes subject to any of the insolvency events referred to in clause 4.15 below.
- 4.14 If before title passes the Customer becomes subject to any of the insolvency events referred to in clause 4.15, or CROMAR reasonably believes that the Customer is about to become subject to any such event and notifies the Customer accordingly, then, provided that the Product(s) has/have not been resold to a customer of the Customer in an arm's length transaction concluded in the ordinary course of the Customer's business or irrevocably incorporated into another product (such that they cannot reasonably be removed or separated from such other product without causing material damage to the Product(s)), and without limiting any other right or remedy, CROMAR may at any time require the Customer to deliver up the Product(s) and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Product(s) is stored in order to recover it. Customer agrees to take all reasonable steps to facilitate, and to procure that any such third party fully cooperates with, any such action by CROMAR to recover the Product(s).
- 4.15 For the purposes of clause 4.14, an "**insolvency event**" includes the Customer:
- (a) suspending, or threatening to suspend, payment of debts, or being unable to pay its debts as they fall due;
  - (b) taking any step or action in connection with it entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, 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;
  - (c) suspending or threatening to suspend, ceasing or threatening to cease to carry on all or a substantial part of its business;
  - (d) experiencing a deterioration in its financial position so as to reasonably justify the opinion that its ability to pay the Price is in jeopardy; or
  - (e) any analogous event occurs under the law of any jurisdiction to which the Customer is subject.



## **5. CROMAR WARRANTY**

- 5.1 CROMAR warrants that for the Warranty Period the Product(s) shall:
- (a) conform in all material respects to their specification; and
  - (b) be free from material defects in design, material and workmanship.
- 5.2 If the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that the Product(s) do not comply with the warranty in clause 5.1, and gives CROMAR a reasonable opportunity to examine such Product(s), then CROMAR shall, to the extent that such Product(s) do not comply with the warranty set out in clause 5.1, at its option, repair or replace the defective Product(s), or refund the Price of the defective Product(s) in full as well as the applicable VAT.
- 5.3 CROMAR shall not be liable for the Product(s)' failure to comply with the warranty if:
- (a) the defect arises because the Customer has failed to follow CROMAR's oral or written instructions as to storage, installation, commissioning, use or maintenance;
  - (b) the Customer alters or repairs the Product(s) without CROMAR's prior written consent;
  - (c) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.
- 5.4 CROMAR's total liability to the Customer under the warranty in clause 5.1 shall in no circumstances exceed the Price of the Product(s) giving rise to any claim.
- 5.5 Except as expressly provided in clause 5.1, CROMAR gives no warranties and makes no representations, whether express or implied, in relation to the Product(s). The warranties set out in clause 5.1 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, which are excluded to the fullest extent permitted by law. No oral or written information or advice given by CROMAR or any of its employees or representatives will create a warranty.
- 5.6 All warranties and terms implied by law (including those terms implied by sections 12 to 15 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded.



## **6. LIMITATION OF LIABILITY**

- 6.1 References to liability in this clause 6 include every kind of liability arising under or in connection with this Agreement including liability in contract, tort (including negligence) or otherwise.
- 6.2 Except as expressly stated in clause 5.1, and subject to clause 6.6, CROMAR shall in no circumstances have any liability for any Losses which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
- (a) special damage even if CROMAR was aware of the circumstances in which such special damage could arise;
  - (b) loss of profits;
  - (c) loss of anticipated savings;
  - (d) loss of business opportunity, loss of sales or business;
  - (e) loss of agreements or contracts;
  - (f) loss of goodwill;
  - (g) loss or corruption of data; and
  - (h) indirect or consequential loss.
- 6.3 Subject to clause 6.6, the total liability of CROMAR, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed a sum equal to the total amount of the Price paid by the Customer for the Product(s).
- 6.4 The Customer hereby agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) CROMAR shall have no liability in any circumstances otherwise than in accordance with the express terms of this Agreement.
- 6.5 All references to "CROMAR" in this clause 6 for the purposes of this clause, be treated as including all employees, subcontractors and agents of CROMAR and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause 6.



- 6.6 The exclusions and limitations set out in clauses 5 & 6 of this Agreement shall apply to the fullest extent permissible at law, but nothing in this Agreement limits or excludes CROMAR's liability for:
- (a) death or personal injury caused by its negligence;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) any other liability which cannot be limited or excluded by law.

6.7 This clause 6 shall survive any termination or expiry of this Agreement.

## **7. DATA PROTECTION**

- 7.1 Each party shall comply with its respective obligations under the Data Protection Legislation in relation to the control and processing of Personal Data under this Agreement.
- 7.2 Where a party acts as Data Controller, it shall ensure that it has all necessary notices and consents (or another lawful basis) in place to enable lawful processing of Personal Data, including any processing carried out by a data processor on its behalf, for the duration and purposes of this Agreement.
- 7.3 Where a party acts as Data Processor, it shall:
- (a) process Personal Data only in accordance with the documented instructions of the Data Controller (unless required otherwise by law);
  - (b) ensure that persons authorised to process the Personal Data are bound by confidentiality obligations;
  - (c) implement appropriate technical and organisational measures to ensure the security of the Personal Data and to protect the Personal Data against unauthorised or unlawful processing and against accidental or unlawful loss, destruction, damage, alteration, disclosure or access;
  - (d) not transfer Personal Data outside the UK without the authorisation of the data controller and without ensuring appropriate safeguards are in place in accordance with Data Protection Legislation;
  - (e) assist the Data Controller in responding to data subject requests and in ensuring compliance with obligations relating to security, breach notifications, and impact assessments and in cooperating with the Information Commissioner's Office or other supervisory authorities;
  - (f) notify the Data Controller without undue delay upon becoming aware of a Personal Data breach; and



- (g) at the written direction of the Data Controller, delete or return all Personal Data on termination of this Agreement, unless retention is required by law.

7.4 Each party shall provide reasonable assistance and cooperation to the other to enable compliance with the Data Protection Legislation in connection with this Agreement.

## **8. CONFIDENTIALITY AND PUBLICITY**

8.1 Each party hereby agrees and undertakes that it shall not at any time use any Confidential Information of the other party otherwise than in connection with the exercise and performance of its rights and obligations under this Agreement ("**Permitted Purposes**").

8.2 In relation to the Customer's Confidential Information:

- (a) CROMAR shall treat as confidential all Confidential Information of the Customer supplied under this Agreement. CROMAR shall not divulge any such Confidential Information to any person, except to its own employees and then only to those employees who need to know it for the Permitted Purposes. CROMAR shall ensure that its employees are aware of, and comply with, this clause 8; and
- (b) CROMAR may provide any of its subcontractors with such of the Customer's Confidential Information as they need to know for the Permitted Purposes, provided that such sub-contractors have first entered into a written obligation of confidentiality owed to CROMAR in terms similar to clause 8.2(a) (which CROMAR shall ensure is adhered to).

8.3 In relation to CROMAR's Confidential Information:

- (a) The Customer acknowledges that the design of the Product(s) and the Documents may contain and/or embody Confidential Information belonging to CROMAR and the Customer shall treat as strictly confidential all such Confidential Information and all other Confidential Information of CROMAR supplied to the Customer or otherwise coming to the attention of the Customer as a result of this Agreement;
- (b) the Customer shall not, without the prior written consent of CROMAR, divulge any part of CROMAR's Confidential Information to any person other than to Customer employees and Permitted Contractors, who need to know it for the Permitted Purposes;
- (c) the Customer undertakes to ensure that the persons mentioned in clause 8.3(b) are made aware, before the disclosure of any part of CROMAR's



Confidential Information, that the same is confidential, and that such persons enter into a written obligation of confidentiality owed to the Customer, in terms similar to clause 8.3(b) (which the Customer shall ensure is adhered to); and

- (d) the Customer further undertakes to ensure that any persons who do not fall within the category of persons under clause 8.3(b), including without limitation any visitors to the premises where the Product(s) are located or operated, are either prevented from observing the Products/s and/or from learning any Confidential Information of CROMAR or, if this is not possible, that clause 8.3(c) applies to all such persons.

8.4 The restrictions imposed by clauses 8.1 - 8.3 above shall not apply to the disclosure of any Confidential Information which:

- (a) is now in, or subsequently comes into, the public domain otherwise than as a result of a breach of any of the obligations imposed by this clause 8.
- (b) before any negotiations or discussions leading to this Agreement was already known by the receiving party and was obtained or acquired in circumstances under which the receiving party was not bound by any form of confidentiality obligation; or
- (c) is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the disclosing party to limit disclosure to such authorised person to the extent necessary);
- (d) the receiving party can demonstrate was independently developed by it, without reference to the disclosing party's Confidential Information.

8.5 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

8.6 This clause 8 shall remain in full force and effect, despite any termination of this Agreement.

## **9. INTELLECTUAL PROPERTY RIGHTS**

9.1 The Customer acknowledges that all Intellectual Property Rights in the Product(s) (including without limitation in the design of the Product(s) and its/their parts, all drawings, plans, specifications and all and other technical information, data the



Documents and any other documentation (including the Documents) related to the Product(s) belong to CROMAR, and neither the Customer nor any user of the Product(s) shall have or acquire any rights in or to the same other than the right to use the same in accordance with the terms of this Agreement.

- 9.2 Nothing in this Agreement shall operate to transfer any Intellectual Property Rights in the Product(s) or the Documents to the Customer.
- 9.3 CROMAR grants to the Customer a non-exclusive, non-transferable licence to use the Product(s) (the Documents and any other related documentation) solely for the purposes of operating, maintaining and repairing the Product(s) for its/their intended purpose.
- 9.4 The Customer shall not, without CROMAR's prior written consent:
- (a) copy, reproduce, modify, adapt or create derivative works from the Product(s) or its/their design;
  - (b) reverse engineer, decompile, disassemble or otherwise attempt to derive source materials, save to the extent permitted by law; or
  - (c) use any Intellectual Property Rights in the Product(s), the Documents or any other related documentation for the purpose of manufacturing or having manufactured identical or substantially similar machinery.
- 9.5 The Customer shall not remove, obscure or alter any proprietary notices or marks on the Product(s) or related documentation.
- 9.6 The Customer shall promptly notify CROMAR of any actual or suspected infringement of CROMAR's Intellectual Property Rights which comes to the Customer's attention and shall provide reasonable assistance (at the Customer's cost) in enforcing those rights.

## **10. TERMINATION**

- 10.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - (b) the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;



- (c) the other party commits a material breach of any other term of this Agreement which is not capable of being remedied;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (g) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (h) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (l) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.

10.2 On termination of this Agreement for any reason the Customer shall immediately pay to CROMAR all of CROMAR's unpaid invoices and interest and, in respect of any



Product(s) supplied but for which no invoice has been submitted, CROMAR shall submit an invoice, which the Customer shall pay immediately on receipt.

- 10.3 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 10.4 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

## 11. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## 12. REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## 13. ENTIRE AGREEMENT

- 13.1 This Agreement, the schedules and the documents annexed as appendices to this Agreement or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.
- 13.2 Each party acknowledges that, in entering into this Agreement, it does not rely and has not relied on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or not) ("**Representation**") other than as expressly set out in this Agreement.
- 13.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this Agreement.



13.4 Nothing in this clause shall limit or exclude any liability for fraud.

#### **14. VARIATION**

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### **15. SEVERANCE**

15.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

15.2 If any provision or part-provision of this Agreement is deemed deleted under clause 15.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### **16. CONTRACT FORMATION**

A binding agreement between CROMAR and a Customer in respect of any particular consignment of Product(s) is made when both the Customer and CROMAR each have a copy of the Order Acknowledgement Form relating to the said consignment. Such Order Acknowledgement Form shall incorporate these terms and conditions.

#### **17. THIRD- PARTY RIGHTS**

Save in relation to clause 6.5, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

#### **18. NO PARTNERSHIP OR AGENCY**

18.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

18.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.



## 19. FORCE MAJEURE

- 19.1 **"Force Majeure Event"** means any circumstance not within a party's reasonable control including, without limitation:
- (a) acts of God, flood, drought, earthquake or other natural disaster;
  - (b) disease, epidemic or pandemic (including but not limited to COVID-19);
  - (c) 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;
  - (d) nuclear, chemical or biological contamination or sonic boom;
  - (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
  - (f) collapse of buildings, fire, explosion or accident;
  - (g) non-performance by suppliers or subcontractors; and interruption or failure of utility service.
- 19.2 Provided it has complied with the provisions of clause 19.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 19.3 The corresponding obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 19.4 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and
  - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 19.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 3 months the



Party not affected by the Force Majeure Event may terminate this Agreement by giving 30 days' written notice to the Affected Party.

## **20. NOTICES**

20.1 Any notice required or authorised to be given hereunder ("Notice") shall be served personally, sent by pre-paid registered letter addressed to the relevant party at the address referred to below or by email sent to the relevant Party at the email address referred to below, or such other address or email address as may from time to time be notified by Notice to the other Party for this purpose:

In the case of CROMAR:

FAO: [administration@cromar.co.uk](mailto:administration@cromar.co.uk)

In the case of the Customer:

to the email address for the Customer shown in the Order Acknowledgement Form, or otherwise communicated to CROMAR by the Customer.

20.2 Any Notice given pursuant to clause 20.1 shall:

- (a) when delivered personally be deemed to have been received upon delivery;
- (b) when sent by registered post (and in the absence of evidence of earlier receipt), be deemed to be delivered 3 days after despatch provided that the Party giving Notice proves that the registered envelope containing the Notice was properly addressed; and
- (c) where served by email be deemed to be served when sent to the correct email address on a Business Day during Business Hours, save that where a delivery failure or out of office notification or other communication indicating that the email has not been received read or opened is received by the Party serving the notice, the notice shall be deemed not to have been sent. Where the email is sent on a day other than a Business Day, or on Business Day but after Business Hours, the email will be deemed to have been sent on the next Business day after the day on which the email is sent.

20.3 This clause 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.



## **21. GOVERNING LAW AND JURISDICTION**

- 21.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 21.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).



## SCHEDULE 1

### Template Order Acknowledgement Form (incorporating Key Commercial Terms)

Customer Address

**Order Acknowledgement:** XXXX

Despatch to  
Name  
Address

Invoice to  
Name  
Address

Post Code

Post Code

Your Sales Contact: Name  
Your Order Number: Order No  
Your Account Code: Account code

Document Revision: Rev  
Date of Order: DD/MM/YY

Page 1 of 1

Item	Quantity	Due Date	Part / Descriptions / Instructions / Comments	Drawing Issue	VAT Code	Price Each	Total
ORDER ACKNOWLEDGEMENT							
1	X EA	DD/MM/YY	Part No Desc 1 Desc 2 Desc 3 Desc 4		1	Unit Price	Value
2	X EA	DD/MM/YY	Part No Desc 1 Desc 2 Desc 3		1	000.0	0000.00
3	X EA	DD/MM/YY	Part No Desc 1 Desc 2 Desc 3		1	000.0000	000.00

Please check the above details. If they are not in accordance with your requirements please contact the sales office as soon as possible.

Terms:		VAT	VAT Total	Goods Total	Sub Total	00000.00
30 Days from the date of the Invoice	1	20.00	0000.00	000000.00	VAT Amount	0.00
					Total Value	00000.00

Currency: Sterling

All Cromar products are supplied under its standard terms and conditions which are published on its website and may be changed from time to time.

Frederick Crowther & Son Ltd, Restrick Common,  
Brighouse, West Yorkshire, HD6 3DR

telephone: +44(0) 1484 400200  
fax: +44(0) 1484 728088

email: sales@cromar.co.uk  
Registered in England No: 554430

