

SEW EURODRIVE LTD: STANDARD TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

- 1.1 **Business Day:** a day other than a Saturday, Sunday or public holiday in England.
- 1.2 **Company:** SEW Eurodrive Limited, a company registered in England and Wales with company number 00947360 and whose registered office is at Sew Eurodrive Limited Devilliers Way, Trident Park, Normanton, West Yorkshire, WF6 1GX.
- 1.3 **Conditions:** these Standard Terms and Conditions of Sale.
- 1.4 **Contract:** means the contract between the Company and the Purchaser for the sale and purchase of the Goods in accordance with these Conditions.
- 1.5 **Delivery Location:** has the meaning given in Clause 5.1.
- 1.6 **Force Majeure Event:** means any circumstance not in a party's reasonable control including:
- 1.6.1 acts of God, flood, drought, earthquake or other natural disaster;
 - 1.6.2 epidemic or pandemic;
 - 1.6.3 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;
 - 1.6.4 nuclear, chemical or biological contamination, or sonic boom;
 - 1.6.5 any law or any action taken by a government or public authority, including those caused directly/indirectly by the coronavirus (COVID-19 outbreak or any other epidemic or pandemic), imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - 1.6.6 collapse of buildings, fire, explosion or accident;
 - 1.6.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this Clause, or companies in the same group as that party);
 - 1.6.8 non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this Clause); and
 - 1.6.9 interruption or failure of utility service.
- 1.7 **Goods:** the products described in the Order.
- 1.8 **Order:** any order from the Purchaser to the Company for the supply of Goods in such form as the Company may determine from time to time, which shall incorporate the terms of these Conditions.
- 1.9 **Purchaser:** the person, firm or company to whom Goods are supplied by the Company.
- 1.10 **Specification:** any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Purchaser and the Company.
- ### 2. EXISTENCE OF CONTRACT
- 2.1 All quotations, offers and tenders are made and all orders are accepted by the Company subject to these Conditions. Except as otherwise provided herein, all other terms, conditions or warranties are excluded from any contract between the Purchaser and the Company including any terms and conditions which the Purchaser may purport to apply under any Order, or any terms which are implied by law, trade or custom, practice or dealing.



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Bank Account / Registration / Directors

HSBC, 66 Westgate, Wakefield, West Yorkshire
GBP Account No: 81005189 Sort Code: 40-45-11
EURO Account No: 39120556 Sort Code: 40-05-15
VAT Registration No: 170-9086-56 Registered in England: 947360
Directors: J. Bickle (Chairman) M. Holmes (Managing)

- 2.2 A quotation for the Goods given by the Company shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.
- 2.3 The Order constitutes an offer by the Purchaser to purchase the Goods in accordance with these Conditions. The Purchaser is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.4 The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order ("**Order Acceptance**"), at which point the Contract shall come into existence.
- 2.5 No particulars contained in any samples, drawings, advertising matter, catalogues or other publications supplied by the Company nor any verbal representation by any employee or agent of the Company shall be part of the Contract, have any contractual force, nor shall they be treated as constituting any representation on the part of the Company.
- 2.6 Where Goods are supplied by the Company under a blanket Order given by the Purchaser or in accordance with delivery schedules, release authorisations or any other special instruction from the Purchaser to the Company, each such delivery schedule, release authorisation or special instruction shall be deemed a separate contract to which these Conditions apply and prevail.

3. AMENDMENTS AND CANCELLATION

- 3.1 No alterations or modifications to these Conditions shall be binding on the Company unless expressly accepted or varied in writing by a duly authorised signatory of the Company.
- 3.2 Cancellation of an Order cannot be made without the Company's consent in writing and is subject to the Company's sole discretion. In the event of an agreed cancellation the Purchaser shall indemnify the Company against all losses, including the Company's loss of profits, liabilities and expenses of whatever nature incurred by the Company arising directly or indirectly from such cancellation.

4. PRICE AND PAYMENT

- 4.1 Except as otherwise agreed, the price for the Goods shall be as detailed in the Order. The Company shall be entitled to invoice the Purchaser for the price of the Goods in pounds sterling or in any other nominated currency at its sole discretion.
- 4.2 Except as otherwise agreed between the Purchaser and the Company, the price for the Goods shall include standard UK mainland delivery but shall not include VAT, taxes and all other applicable duties.
- 4.3 The Company reserves the right to deliver the Goods by instalments. Where the Goods are delivered by instalments in stages the Company may invoice each instalment or stage separately and the Purchaser shall pay such invoice in accordance with these Conditions.
- 4.4 Unless otherwise agreed in writing the price of the Goods shall be paid at the end of the month following the month in which each invoice is sent to the Purchaser. If the Purchaser fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under Clause 11 (Termination), the Purchaser shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 4.4 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

5. CARRIAGE AND DELIVERY

- 5.1 Delivery of the Goods shall take place at the Purchaser's premises or at such other location as may be agreed by the Company (**Delivery Location**) and the delivery date will be notified by the Company in writing in the Order Acceptance.
- 5.2 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.



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- 5.3 Time for delivery is given as accurately as possible but is not guaranteed and time is not of the essence of the Contract. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Purchaser's failure to provide the Company with adequate delivery instructions or any other instructions which are relevant to the supply of the Goods.
- 5.4 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Purchaser in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Purchaser's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods, or to accept delivery.
- 5.5 Where the Goods are delivered by instalments, each instalment shall be deemed to be the subject of a separate Contract and shall be invoiced and paid for separately. No default or failure by the Company in respect of any one or more instalments shall entitle the Purchaser to cancel any other instalment, treat the Contract as repudiated or to damages.
- 5.6 Where the Company has notified the Purchaser that the Goods are awaiting collection or are ready for dispatch and Purchaser fails to arrange for such collection or delivery within 5 Business Days, the Company may at its discretion:
- 5.6.1 arrange for such Goods to be delivered to the Purchaser and charge the Purchaser for all related costs and expenses;
- 5.6.2 store the Goods until delivery takes place, and charge the Purchaser for all related costs and expenses (including insurance).
- 5.7 If ten Business Days after the day on which the Company notified the Purchaser that the Goods were ready for delivery the Purchaser has not accepted actual delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Purchaser for any shortfall below the price of the Goods.
- 6. WARRANTIES**
- 6.1 The Company warrants that on delivery and for a period of 24 months from the date of delivery ("**Warranty Period**"), the Goods shall:
- 6.1.1 be in accordance with the specification supplied by the Company (if any) in all material respects;
- 6.1.2 and shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979),
- but are not tested or sold as fit for any particular purpose unless specifically agreed in writing by the Company.
- 6.2 So far as practicable the Company may, at its discretion, assign to the Purchaser the benefit of any guarantee, warranty, service or maintenance commitment which it may have received from any third party in relation to the Goods.
- 6.3 The Purchaser shall inspect the Goods upon delivery and shall within three Business Days thereof, notify the Company of any alleged defect, damage or failure to comply with the specifications.
- 6.4 If within the Warranty Period, any part manufactured by the Company for the Purchaser under the Contract is found by the Company upon its inspection to have become defective under normal conditions of service and use, the Company will at its sole discretion repair or replace the defective part, or refund the price of the defective Goods in full. All such repair and/or replacement under this Clause 6.4 shall be undertaken by the Company solely upon Company premises and the Purchaser shall bear the costs of delivering the Goods to the Company together with any costs incurred by the Company in the dismantling and/or reassembling of the Goods unless otherwise agreed. The benefit of this Clause is non-assignable and any potential claim regarding the quality of the Goods must be made by the Purchaser and not a third party to which the Goods are resold by the Purchaser.
- 6.5 The Company shall not be liable for the Goods' failure to comply with the warranty set out in Clause 6.1 in any of the following events:

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- 6.5.1 where the identification or serial number has been altered, defaced, removed or otherwise deliberately damaged by the Purchaser's employees, agents or any third party;
- 6.5.2 the Purchaser makes any further use of such Goods after giving notice in accordance with Clause 6.3;
- 6.5.3 the defect arises because the Purchaser failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 6.5.4 the defect arises as a result of the Company following any drawing, design or Specification supplied by the Purchaser;
- 6.5.5 the Purchaser alters, modifies or repairs such Goods without the written consent of the Company;
- 6.5.6 the defect arises as a result of fair wear and tear, misuse, wilful damage, negligence, or abnormal storage or working conditions;
- 6.5.7 the Goods have been incorrectly installed and/or connected by the Purchaser;
- 6.5.8 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.6 Except as provided in this Clause 6, the Company shall have no liability to the Purchaser in respect of the Goods' failure to comply with the warranty set out in Clause 6.1.
- 6.7 Except as expressly provided in this Clause 6 or otherwise in these terms and conditions, all warranties in relation to the Goods which would otherwise be implied by law are hereby excluded to the fullest extent permitted by law.
- 6.8 The terms of this agreement shall apply to any repaired or replacement Goods supplied by the Company.
- 6.9 For the avoidance of doubt, the operation of Clause 6.4 and/or any defective Goods shall remain subject to the provisions of Clause 9.
- 6.10 The Company makes no warranty as to the condition, safe keeping or maintenance of the Purchaser's tools if such tools are utilised during to the process of manufacture and shall in no way be liable to compensate the Purchaser for any damage caused thereon.
- 7. MAINTENANCE**
- 7.1 The Purchaser shall at all times act in accordance with all statutory or regulatory enactments relating to its use or installation of the Goods. The Purchaser shall indemnify the Company against any liability incurred due to the breach of this Clause 7.1.
- 7.2 The Purchaser shall at all times adhere and comply with the Company's maintenance schedules and the Specifications relating to the Goods.
- 8. INTELLECTUAL PROPERTY AND DESIGN RIGHTS**
- 8.1 The Purchaser acknowledges that all Intellectual Property Rights used for the manufacture of the Goods that originate from the Company shall remain the exclusive property of the Company (or, where applicable, the third party licensor from whom the Company derives the right to use them).
- 8.2 Where Goods are manufactured to the Purchaser's design and/or specifications the Company will retain all or any drawings, designs or other documents which are supplied to the Company by the Purchaser under the Contract unless agreed otherwise.
- 8.3 The Purchaser warrants that any of its designs or specifications supplied to the Company do not infringe any Intellectual Property Rights.

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- 8.4 In some circumstances the design and/or specification provided by the Purchaser will require adjustment or variation to ensure that the selections and materials are satisfactory and operational for the notified intended purpose. In such circumstances, the Company shall notify the Purchaser and agree any variations with the Customer. No such variation undertaken by the Company to any design or specification provided by the Purchaser under the Contract shall constitute a breach of Contract.
- 8.5 For the purposes of this Clause 8, "Intellectual Property Rights" means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks, business 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 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.
- 9. LIMITATION OF LIABILITY**
- 9.1 The following provisions set out the entire financial liability of the Company (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Purchaser in respect of any breach of the Contract howsoever arising and any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.
- 9.2 Nothing contained in the Contract shall limit or restrict the Company's liability for:
- 9.2.1 death or personal injury caused by the Company's negligence;
- 9.2.2 fraud or fraudulent misrepresentation; or
- 9.2.3 any other matter, liability for which may not be limited under applicable law.
- 9.3 Subject to Clause 9.2, the Company shall not in any circumstances be liable for any:
- 9.3.1 loss of profit, interest, revenue or savings;
- 9.3.2 loss of sales, contract or business or damage to goodwill; or
- 9.3.3 indirect or consequential loss or damage;
- even if the Company is advised in advance of the possibility of any such losses or damages.
- 9.4 Subject to Clause 9.2 and Clause 9.3, the Company's total aggregate liability howsoever arising under or in connection with the Contract (whether in respect of one claim or the aggregate of various claims) shall not exceed in aggregate an amount equal to the total sums paid in cleared funds under the Contract by the Purchaser.
- 9.5 The Company shall be discharged of liability arising under or connection with the Contract unless (without extending statutory limitation) proceedings are begun and served within 12 months after the Purchaser became aware (or should reasonably have become aware) of the facts giving rise to such liability.
- 9.6 Any claim by the Purchaser or acceptance of liability by the Company in respect of the Goods shall not entitle the Purchaser to reject or refuse to pay for any other Goods comprised in the Contract or any goods or services comprised in any other contract between the parties.
- 9.7 The Purchaser shall be responsible for and shall indemnify the Company against any and all claims, proceedings, costs, damages, liabilities and expenses incurred or suffered by the Company arising from any instructions, data, drawings, specifications, tooling, equipment, materials or other items supplied by or on behalf of the Purchaser to the Company or from any failure to supply the same or any inaccuracy, insufficiency or default in them or from any infringement or alleged infringement of the rights of any third party resulting from the Company's use of any

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of the foregoing items.

9.8 This Clause 9 shall survive termination of this agreement.

10. RESERVATION OF TITLE & RISK

10.1 The risk in the Goods shall remain with the Company until delivery by the Company or collection of the Goods by the Purchaser or payment for the Goods by the Purchaser, whichever is the earlier, at which time the risk in the Goods shall be transferred to the Purchaser.

10.2 Title to the Goods shall only pass to the Purchaser upon the happening of any one of the following events:-

10.2.1 the Company receives payment in full (in cleared funds) for the Goods and any other goods that the Company has supplied to the Purchaser;

10.2.2 the Company serving on the Purchaser notice in writing specifying that title in the Goods has passed;

10.2.3 the Purchaser resells the Goods, in which case title to the Goods shall pass to the Purchaser at the time specified in Clause 5.7.

10.3 The Company may recover Goods in respect of which title has not passed to the Purchaser on whichever is the earlier of the following dates:-

10.3.1 on the expiration of any agreed period of credit in relation to the Goods;

10.3.2 if the Purchaser, being a Company, does anything or fails to do anything which would entitle a creditor to appoint a receiver to take possession of any of the Purchaser's assets or which would entitle any person (including the Purchaser itself) to present a petition for winding up of the Purchaser or to propose an application for an administration of or voluntary arrangement in relation to the Purchaser under the Insolvency Act 1986 or if a resolution is passed for the winding up of the Purchaser (otherwise than for the purposes of amalgamation or reconstruction whilst solvent) or if the Purchaser ceases or threatens to cease to carry on its business by reason of insolvency or approaching insolvency or otherwise or if anything analogous to any of the foregoing under the law of any jurisdiction occurs to the Purchaser in any event, if distress or execution is levied against any of the Purchaser's assets or if a judgment against the Purchaser remains unsatisfied for more than 5 Business Days

10.4 If either of the events in Clause 10.3 occur:

10.4.1 the Purchaser irrevocably licenses the Company, its officers, employees and agents to enter upon any premises of the Purchaser, with or without vehicles, for the purpose either of satisfying itself that condition 10.5 is being complied with by the Purchaser or of recovering any Goods in respect of which title has not passed to the Purchaser; and

10.4.2 the Purchaser's right to resell the Goods or use them in the ordinary course of its business ceases immediately.

10.5 Until title to the Goods has passed to the Purchaser under these Conditions it shall possess the Goods as fiduciary agent and bailee of the Company. If the Company so requires, the Purchaser shall store the Goods separately from other goods and shall ensure that they are clearly identifiable as belonging to the Company. During such time as the Purchaser possesses the Goods with the Company's consent, the Purchaser may in the normal course of its business sell or hire the Goods before the Company receives payment for the Goods. Where the Purchaser sells the Goods in accordance with this Clause 10.5:

10.5.1 it does so as principal and not as the Company's agent and without committing the Company to any liability to the third party dealing with the Purchaser; and

10.5.2 title to the Goods shall pass from the Company to the Purchaser immediately before the time at which resale by the Purchaser occurs.



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10.6 Notwithstanding that the property in the Goods has not passed to the Purchaser, the Company shall be entitled to maintain an action for the price of the Goods.

11. TERMINATION

11.1 The Company shall be entitled to terminate any Contract between it and the Purchaser with immediate effect by giving written notice if the Purchaser:

11.1.1 fails to pay any invoice in accordance with these Conditions on the due date for payment; or

11.1.2 commits any continuing or material breach of these Conditions; or

11.1.3 is unable to pay its debts in the ordinary course of its business, enters into any composition or arrangement (whether formal or informal) with its creditors, has a receiver, manager, administrator or administrative receiver appointed for all or any of its undertaking, assets or income, has a resolution passed for its winding up, has a petition presented to any court for its winding up or for an administration order (or, in the case of a party consisting of one or more individuals, any of them has a bankruptcy petition presented against it) or suffers under the laws of any jurisdiction any action similar to any of the foregoing;

11.1.4 suspends or threatens to suspend or ceases or threatens to cease to carry on all or a substantial part of its business; or

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

11.2 If for any reason the completion of the Contract or the delivery of the Goods is in the Company's view rendered impracticable the Company may terminate the Contract by written notice to that effect. Thereupon the Purchaser will pay to the Company such proportionate sum under the Contract of any Goods delivered prior to such notice.

11.3 The Purchaser will pay to the Company such proportionate sum under the Contract of any Goods delivered prior to such termination.

12. FORCE MAJEURE

12.1 Provided it has complied with 12.2, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement (in whole or in part) by a Force Majeure Event ("**Affected Party**"), or if such performance is rendered more onerous, 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 as are prevented by the Force Majeure Event during the continuation of the Force Majeure Event and for such time after it ceases, as is necessary for that party, using all reasonable endeavours, to recommence its affected operations in order to perform its obligations. The time for performance of such obligations shall be extended accordingly.

12.2 The Affected Party shall:

12.2.1 as soon as reasonably practicable after the start of the Force Majeure Event, 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 the agreement; and

12.2.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

12.3 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than three months, the party not affected by the Force Majeure Event may terminate this agreement by giving one month's written notice to the Affected Party.

12.4 For the avoidance of doubt, the occurrence of a Force Majeure Event shall not release the Purchaser from its obligations to pay any sums due under this agreement.



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13. RESALE

The Company shall not be liable for any Goods which are resold by the Purchaser and the Purchaser shall indemnify the Company against any loss, damage, injury, expense, cost (including legal costs) and/or damages arising directly or indirectly from any actual or alleged fault in such resold Goods.

14. RETURN OF GOODS

Subject to Clause 6.4, no Goods delivered in accordance with the Contract will be accepted for return without the prior approval of the Company in accordance with the Company's official returns authorisation procedure and on the terms to be determined at the absolute discretion of the Company. Goods returned without the prior written approval of the Company may at the Company's absolute discretion be returned to the Purchaser or retained at the Purchaser's cost without any prejudice to any rights and remedies available to the Company.

15. SET OFF AND COUNTERCLAIM

The Purchaser shall not be entitled to withhold payment of any invoice by reason of any right of set-off, counterclaim or deduction which the Purchaser may have or allege to have or for any reason whatsoever.

16. NOTICES

16.1 Any notice required to be served pursuant to this Contract shall be served:

16.1.1 on the Company at DeVilliers Way, Trident Park, Normanton, West Yorkshire, WF6 1GX or such other address as the Company may from time to time notify to the Purchaser; and

16.1.2 on the Purchaser at the address notified to the Company

by first class registered post, registered air mail or by telex or facsimile. (Any such notice shall be deemed to have been served in the case of a destination in the UK 2 Business Days after the date of despatch and 7 Business Days after the date of despatch to any other destination and in the case of despatch by telex or facsimile when the addressee's telex or fax machine acknowledges receipt thereof).

17. AMENDMENTS

No amendment or variation of the Contract shall be effective unless in writing and signed by or on behalf of both parties.

18. SEVERANCE

If any provision of this agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, the other provisions of this agreement and the remainder of the affected provisions shall continue to be valid.

19. WAIVER

Failure by the Company at any time to enforce any of these Conditions shall not be construed as a waiver by the Company of such Conditions or any other Conditions and the Company shall be entitled to enforce any such breach at any time. Waiver of one or more of these Conditions by the Company shall in no way affect the validity and/or enforceability of any other provision of the Contract.

20. ASSIGNMENT

The Purchaser may not assign, sub-contract or in any way dispose of its rights or obligations under the Contract without the prior written consent of the Company.

21. THIRD PARTY RIGHTS

Nothing in these Conditions shall be deemed to create any right enforceable by any third party.



Registered Office

SEW Eurodrive Ltd
DeVilliers Way
Trident Park
Normanton
West Yorkshire
WF6 1GX

Telephone 01924 893855
Fax 01924 893702
24hr 01924 896911
www.sew-eurodrive.co.uk
info@sew-eurodrive.co.uk

Regional Sales Office

Southern Office
Scottish Office
Midlands Office

Telephone 01189 701699 Fax 01189 701021
Telephone 01786 478730
Telephone 01527 877319 Fax 01527 575245

Bank Account / Registration / Directors

HSBC, 66 Westgate, Wakefield, West Yorkshire
GBP Account No: 81005189 Sort Code: 40-45-11
EURO Account No: 39120556 Sort Code: 40-05-15
VAT Registration No: 170-9086-56 Registered in England: 947360
Directors: J. Bickle (Chairman) M. Holmes (Managing)

22. LAW AND JURISDICTION

The Contract shall be governed and interpreted according to the laws of England and shall be subject to the jurisdiction of the English courts. Nothing in this Clause shall limit the right of the Company at its sole discretion to bring proceedings in connection with this Contract in any other Court of competent jurisdiction.

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