

# **H**YPERMOTIVE

## STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

22/01/2023  
VERSION: 7.1

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## DOCUMENT CHANGE HISTORY

Version	History
1.0	7 <sup>th</sup> July 2016 Initial Issue
2.0	6 <sup>th</sup> October 2016 updated
3.0	7 <sup>th</sup> February 2017 address updated
4.0	18 <sup>th</sup> February 2017 Clause 5.10 updated
5.0	20 <sup>th</sup> June 2017 Significant overhaul
6.0	20 <sup>th</sup> July 2020 Addition of Extended Warranty option
7.0	22 <sup>nd</sup> Nov 2022 Minor corrections
7.1	22 <sup>nd</sup> Jan 2023 Minor updates to clauses 5.3 and 11

## 1 Interpretation/Definitions

1.1 The words and phrases used in these Conditions shall have the following meanings unless the context otherwise requires:

“Associated Company” means all subsidiary companies (as that term is defined in section 1159 of the Companies Act 2006) from time to time of Hypermotive Limited.

“Background Information” means all knowledge and expertise including but not limited to calculation procedures, data, models, software, know-how, inventions, operation and design know-how or other Intellectual Property Rights existing prior to the date of this Contract which Hypermotive and/or any Associated Companies bring to bear or provide in the course of carrying out or supplying the Goods and/or Services, whether or not contained in Documents or other materials, and whether or not in the public domain but not including common knowledge in the field in which the Goods and/or Services are provided at the date of the Proposal;

“Client” means the party named on the Proposal for whom Hypermotive has agreed to provide the Goods and/or Services in accordance with these Conditions.

“Conditions” means the standard terms and conditions for the supply of the Goods and/or Services set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between Hypermotive and the Client as set out in the Contract and/or the Proposal;

“Confidential Information” means any information or data relating to each party and its technology, research, business or affairs including, without limitation, the Contract, the Price, the Proposal, these Conditions and, in the case of Hypermotive, the Background Information and, in the case of the Client, the Input Material, disclosed whether in writing, orally or by any other means to the other party by that party, or by a third party on that party’s behalf, and whether before or after the date of the Contract;

“Confidentiality Agreement” means the confidentiality agreement (if any) entered into between the parties;

“Contract” means the contract between Hypermotive and the Client for the provision of the Goods and/or Services including these Conditions, the Proposal and the Confidentiality Agreement (if any);

“Deliverables” means the goods and other deliverables (including any instalment of them or any parts of them) (if any) which Hypermotive is to supply to the Client in accordance with these Conditions as more particularly set out in the Proposal;

“Design Validation Plan (DVP)” means a series of tests designed to prove functionality and durability of Goods against a pre-determined duty cycle or set of conditions. These tests may include performance, durability, environmental, abuse/misuse, or other elements”;

“Document” includes, in addition to a document in writing, any map, plan, graph, drawing or photograph, any film, negative, tape, software, CAD data, CAD software, electronic transmission, algorithm, model or other device embodying visual images and any disc, tape or other device embodying any other data:

“Duly Authorised Officer” means, in respect of Hypermotive, any Managing Director, Technical Director, Engineering Director, Finance Director, Company Secretary or Company Solicitor of any Associated Company or division of any Associated Company and, in respect of the Client, any Managing Director or other Director to be considered the same;

“Engineering Design Defect” means a significant defect that is agreed by the parties, or in the absence of such agreement, is determined in accordance with Conditions 11.10 and 20.2 to have been caused by Hypermotive in:

- 1) drawings including tolerances.
- 2) material selection.
- 3) analysis and modelling.
- 4) written technical advice and data.
- 5) testing.
- 6) goods, prototypes, demonstration vehicles, components or parts manufactured and delivered to the Client and which is not the result of a defect in the Input Material provided by the Client and/or their suppliers and/or sub-contractors:

“Force Majeure” means any cause beyond the affected party’s reasonable control including, without limitation, any act of God, riots or insurrections, acts of terrorism, war (whether declared or not), civil disturbance, requisitioning, governmental or parliamentary restrictions, prohibitions or enactments of any kind, acts of destruction, computer failure due to software viruses and other

malfunctions, import or export regulations, strike lock-out or trade dispute (whether involving its own employees or those of any other person) or other industrial disturbances, difficulties in obtaining labour or materials, breakdown of machinery, fire, flood or unavoidable accident;

“Goods and Services”

“Services” means the services, including any Deliverables, to be provided by Hypermotive for the Client as more particularly set out in the Proposal.

“Goods” means the products of any kind manufactured or to be provided by Hypermotive for the Client as more particularly set out in the Proposal.

“Hypermotive” means the Associated Company detailed in the Proposal as the primary contractor for the Contract;

“Input Material” means any Documents or other materials, and any data or other information provided by or required from the Client relating to the Goods and/or Services;

“Intellectual Property Rights” means all and any intellectual property rights of any kind and rights of a like nature wherever and whenever arising and whether registered or unregistered and including, without limitation, any patents, copyright, registered designs, design rights, topographic rights, database rights and rights in Confidential Information, trademarks, trade names, including without limitation the name “Hypermotive”, or service marks;

“Payment Schedule” means the payment schedule set out in the Proposal for the payment of the Price and other sums due from the Client to Hypermotive;

“Price” means the price for the Goods and/or Services as set out in the Proposal and any variations.

“Project Manager” means the individual identified by Hypermotive to manage the provision of the Goods and/or Services under the Contract and to liaise with the Client in respect of the Contract.

“Proposal” means the document to which these Conditions are attached, typically the technical and commercial offer from Hypermotive to the Client.

“Warranty”

“Standard Warranty Period” means the period of time elapsed since manufacture of the Goods, during which Hypermotive warrant the performance of those Goods against the expected performance in the Proposal.

“Extended Warranty Period” means the period of time elapsed since manufacture of the Goods, during which Hypermotive warrant the performance of those Goods against extended operating conditions over and above those set out in the Proposal.

1.2 Headings used in these Conditions are used for the purposes of identification and reference only and shall not constitute part of these Conditions nor be taken into account in the interpretation, construction or meaning thereof.

## 2 Application of these Conditions

2.1 Hypermotive shall provide and the Client shall purchase the Goods and/or Services in accordance with any Proposal of Hypermotive which is accepted by the Client, or any written order of the Client which is accepted by Hypermotive, subject in either case to these Conditions which shall govern, apply to and be incorporated into the Contract for the supply of the Goods and/or Services and/or sale of the Deliverables between the Client and Hypermotive.

2.2 These Conditions supersede and shall govern the Contract to the exclusion of all other terms and conditions contained in any purchase order or any other document submitted by the Client or in any catalogue, advertisement or other publication or subject to which any Proposal is accepted or purported to be accepted by the Client. No other terms or conditions shall be valid or binding upon Hypermotive unless specifically agreed to in writing by a Duly Authorised Officer of Hypermotive.

2.3 The Client acknowledges and agrees that it shall be deemed to have accepted these Conditions if the Client requests Hypermotive to provide the Goods and/or Services.

2.4 Unless specified to the contrary in the Proposal, each Proposal submitted by Hypermotive to the Client shall be open for acceptance for a period of thirty days from the date of the Proposal. Hypermotive may withdraw any Proposal at any time prior to acceptance without giving any reason therefor. If the Client requests Hypermotive to provide the Goods and/or Services outside the validity period stated in the Proposal, Hypermotive shall be entitled to vary the Proposal including the Price, the estimated timetable and the scope of work to be carried out.

2.5 No order submitted or Proposal accepted by the Client shall be deemed to be accepted by Hypermotive unless and until confirmed in writing by a Duly Authorised Officer of Hypermotive.

2.6 These Conditions may only be modified by a variation expressed in writing and signed by a Duly Authorised Officer of Hypermotive and no other action on the part of Hypermotive (whether delivery of the Goods or Deliverables, performance of the Goods and/or Services or otherwise) shall be construed as an acceptance of any other conditions. No other employee, representative or agent of Hypermotive has any authority to amend, modify or vary these Conditions or to make any representations concerning the Deliverables or the Goods and/or Services. Hypermotive shall not be bound by any such amendment, modification, variation or representation unless such amendment, modification or variation is specifically confirmed in writing by a Duly Authorised Officer of Hypermotive.



## 3 Provision of Goods and Services

3.1 Hypermotive will provide the Goods and/or Services subject to these Conditions using reasonable skill and care and in accordance with good engineering practice.

3.2 The extent and scope of the Goods and/or Services and any assumptions on which the Goods and/or Services are to be provided by Hypermotive to the Client are detailed in the Proposal. The Client acknowledges and agrees that it is its sole responsibility to ensure that the assumptions made in the Proposal are correct and to advise Hypermotive of any incorrect assumptions prior to the commencement of the supply of Goods and/or Services. In the event that any of the assumptions are incorrect, Hypermotive reserves the right to make such amendments to the Proposal (including without limitation the scope of work, the Price, timetable and any other matters) as it deems appropriate.

3.3 Hypermotive may at any time make changes to the Goods and/or Services which are necessary to comply with applicable safety and/or other statutory requirements.

3.4 Hypermotive may licence or sub-contract all or any part of its rights and obligations under this contract without the Client's consent.

## 4 Timetable

4.1 Hypermotive shall not be obliged to commence work in respect of the Goods and/or Services until:

4.1.1 Hypermotive has received and accepted, in accordance with Condition 2.5, the Client's purchase order for the Goods and/or Services to signify the Client's acceptance of the Proposal and these Conditions; and

4.1.2 Hypermotive has received from the Client all appropriate and necessary Input Material to commence the supply of the Goods and/or Services as identified in the Proposal free of all charges.

4.2 All dates and periods of time referred to in the Proposal are approximate only unless expressly stated otherwise in the Proposal.

## 5 Payment

5.1 The Proposal shall specify the Price for the provision of the Goods and/or Services. The Price quoted shall be exclusive of all taxes including VAT and duties including export and/or import duties which shall be additionally paid by the Client. The Price shall include all administrative charges

including inter alia postage, telephone, fax and similar expenses together with all travel, accommodation and subsistence costs of Hypermotive personnel specifically identified as being part of the Price in the Proposal. All other costs and expenses not so identified, including inter alia shipping, freight, packaging, transport, freight insurance, spare and replacement parts, equipment and materials, shall be invoiced separately by Hypermotive to the Client and shall include an appropriate handling charge. All travel and subsistence costs of the Client's personnel are the sole responsibility of the Client.

5.2 Hypermotive shall invoice the Client for the Price and other sums payable in accordance with the Payment Schedule set out in the Proposal. In the absence of a Payment Schedule in the Proposal Hypermotive shall be entitled to invoice the Client for all work undertaken on a monthly basis.

5.3 All payments from the Client to Hypermotive are due within 30 days of the date of Hypermotive's invoice (unless otherwise agreed in writing) and shall be paid (in full without set off or other deduction) in such currency as may be specified in the Proposal. Payment shall be made direct to Hypermotive's Bank Account with Lloyds Bank plc, ("the Bank"), 37-38 High Street, Loughborough, Leicestershire, United Kingdom, LE11 2QG

Bank Account Name – Hypermotive Ltd.

Bank Sort Code – 30-65-85

UK Sterling (GBP) Account number – available on request

Euro (EUR) Account number - available on request

US Dollar (USD) Account number – available on request

5.4 In the event that payment is not received within 30 days of the date of the Hypermotive's invoice then Hypermotive shall be entitled in its sole discretion to:

5.4.1 charge interest on the outstanding amount from day to day at the rate of 4% p.a. over the prime base lending rate of the Bank applying from time to time both before and after judgement in respect of all invoices outstanding from their due date until payment is actually received.

5.4.2 suspend provision of the Goods and/or Services without liability to the Client until the outstanding amount is paid in full and the timetable and any other times agreed for the provision of the Goods and/or Services shall be amended accordingly; and/or

5.4.3 terminate the Contract in accordance with Condition 14.2.2.

5.4.4 engage external parties to recover any outstanding amounts including any interest charged according to 5.4.1

5.5 If, by reason of any rise in costs beyond Hypermotive's reasonable control (including, without limitation, the cost of materials, fuel, transport, shipping, insurance or the cost of complying with any statutory provision or order, regulation or by-law), the cost to Hypermotive of providing the Goods and/or Services shall increase Hypermotive shall, in its sole discretion, be entitled to pass a fair and reasonable element of such increased cost on to the Client to be paid by the Client in addition to and with the Price in accordance with this Condition 5.

## 6 Client's Responsibilities

6.1 The Client shall:

6.1.1 Supply to Hypermotive, at its own expense, all Input Material necessary for the execution of the Goods and/or Services, within sufficient time to enable Hypermotive to provide the Goods and/or Services in accordance with the Contract as set out in the Proposal and otherwise from time to time as requested by Hypermotive or as otherwise required to maintain the progress of the Goods and/or Services including, where appropriate and without limitation, data, operating manuals and safety information;

6.1.2 be responsible for ensuring that any Input Material supplied is accurate, in working order and free from defects of any kind.

6.1.3 supply and/or deliver spares and service replacements for any Input Material as required by Hypermotive free of all charges throughout the Goods and/or Services in a timely manner;

6.1.4 ensure that any Input Material supplied to Hypermotive for the supply of the Goods and/or Services complies with the requirements of UK Customs and Excise and any costs suffered or incurred by Hypermotive resulting from any non-compliance shall be charged to and payable by the Client in addition to the Price.

6.1.5 provide or procure the provision of technical support in respect of any Input Material or components thereof from time to time as required in order to support the Goods and/or Services.

6.1.6 provide instructions and feedback when requested to in a timely manner and, in the event of suspension of the Contract due to lack of instructions, any extra costs and expenses suffered or incurred by Hypermotive will be charged to and payable by the Client in addition to the Price.

6.1.7 provide Hypermotive's employees, contractors and such other personnel involved in performing the Goods and/or Services, as identified by Hypermotive, with training in the Client's systems and equipment, including without limitation software, procedures, working methods and product introduction processes, as required for the satisfactory delivery of the Goods and/or Services. Such training will take place at Hypermotive's or the Client's premises, as reasonably determined by Hypermotive, at times agreed between the parties to meet the Goods and/or Services requirement and will be given in English. Any training materials and appropriate manuals will only be provided in English.

6.1.8 ensure and be responsible for the health and safety of Hypermotive's employees, contractors and personnel whilst on the Client's premises and whilst using any of the Client's employees, contractors and personnel whilst on the Client's premises and whilst using any of the Client's systems or equipment, including without limitation Input Materials, and whether on or off the Client's premises; and

6.1.9 notify Hypermotive promptly of any risk, safety issues or incidents arising in respect of the Input Material or in any processes or systems used at the Client's premises.

## 7 Project Management

7.1 Where agreed as applicable by Hypermotive, Hypermotive shall appoint a Project Manager to manage the provision of Goods and/or Services and liaise with the Client as necessary by appropriate means. The Client shall identify a representative to liaise with the Project Manager in respect of the provision of the Goods and/or Services. Any instruction given by the Client's representative shall be binding on the Client.

## 8 Deliverables/Goods

8.1 The Deliverables or Goods shall be as specified in the Proposal and, unless otherwise specified in the Proposal, the Deliverables will be delivered ex works at Hypermotive's premises.

8.2 Any tests, designs, analysis, results, reports, prototypes, demonstration vehicles, parts or models delivered to the Client or issued to the Client during the course of delivery of the Goods and/or

Services do not constitute complete designs or production validation of any component, part, engine, transmission or vehicle.

8.3 The Client shall be deemed to have accepted the Goods and/or Services 30 days after delivery to the Client.

## 9 Risk and Property

9.1 Risk in the Deliverables shall pass to the Client immediately upon notification from Hypermotive to the Client that the Deliverables are available.

9.2 Notwithstanding delivery and/or the passing of risk in the Deliverables or any other provision in these Conditions, property in the Deliverables shall not pass to the Client until Hypermotive has been paid in full for the Goods and/or Services including the Deliverables.

## 10 Rights

10.1 Upon payment by the Client of the total Price due to Hypermotive and any other costs and expenses provided for under the Contract, all Deliverables, including intellectual property rights, shall become the property of the Client. For the avoidance of doubt the Price does not include the cost of searches in third party indexes to identify any existing third party rights and Hypermotive shall not be obliged to carry out any such searches unless specifically requested to do so by the Client at the Client's sole cost.

10.2 The Client accepts that, during the performance of the Goods and/or Services, Hypermotive may use and/or apply its Background Information. The Client shall not obtain or have any rights in such Background Information or any development, modification, improvement or variation thereof made by Hypermotive or on Hypermotive's behalf or any representation of the same whether developed or made by Hypermotive or on Hypermotive's behalf in connection with the delivery of the Goods and/or Services or otherwise. All title, rights and Intellectual Property Rights in the Background Information, and any development, modification, improvement or variation thereof made by Hypermotive or on Hypermotive's behalf, is the sole and exclusive property of Hypermotive provided that the Client may request the right to use such Background Information for the purposes of exploiting the Deliverables but such right will only be granted for internal use within the Client's business.

10.3 Any Input Material provided by the Client shall belong to the Client subject to Hypermotive's right to use such Input Material as it requires in the delivery of the Goods and/or Services and as otherwise provided for in the Contract.

10.4 Any background information developed by either party outside the scope of the Services shall belong to the party developing it.

10.5 Any know-how arising during the provision of the Goods and/or Services shall belong solely and exclusively to Hypermotive and Hypermotive shall be entitled to use such know-how as it determines in its sole discretion.

10.6 Subject to Condition 10.5, any inventions, designs and similar which the parties may develop or create during the delivery of the Goods and/or Services shall belong to the party employing (whether as an employee, contractor or otherwise) the inventor, designer or author thereof. The parties shall notify each other of any proposed application for any Intellectual Property Rights protection or registration in respect of any such invention or design and shall keep each other informed in respect of progress.

10.7 Notwithstanding any other provision of the Contract, the Client shall not be entitled to use in any way the name “Hypermotive” without the express prior written consent of a Duly Authorised Officer to the specific use.

10.8 Hypermotive shall be entitled to use the Client’s name as a listed customer and referee provided this does not compromise Confidential Information so long as this is agreed in advance of the commencement of project work.

10.9 Hypermotive shall be entitled to use all Intellectual Property Rights (including without limitation any patents) belonging to the Client for its own internal research and development work and for other work for the Client.

## 11 Warranties and Liability

11.1 Hypermotive’s standard warranty on Goods and Services is defined as

11.1.1 A warranty that the Goods and Services supplied are free from manufacturing defects and are of satisfactory workmanship and quality

11.1.2 The standard warranty period is twelve (12) months

11.1.3 The standard warranty period starts from the date on which Hypermotive despatch the Goods to the client, or deliver the Services to the client.

## 11.2 Hypermotive warrants that:

11.2.1 it will perform the Services or manufacture or provide the Goods using all reasonable skill and care in accordance with good engineering practice.

11.2.2 unless expressly indicated to the contrary any design, analysis, research and support are the property of Hypermotive and/or one or more Associated Companies.

11.2.3 no third party rights are known to Hypermotive at the date of the Proposal which may be infringed by the Deliverables.

11.2.4 Hypermotive or one of the Associated Companies is the owner of the rights in the Background Information and the Deliverables and is free to transfer the Deliverables to the Client as indicated in the Contract save for those instances when, at the Client's request, Hypermotive has been asked to include third party proprietary products and information.

## 11.3 In the event of a breach of the warranty at Condition 11.2.3 above, Hypermotive shall be entitled at its own expense and sole option and as the Client's sole remedy for such breach either to:

11.3.1 procure the right for the Client to continue using the Deliverables; or

11.3.2 make such alterations, modifications or adjustments to the Deliverables so that they become non-infringing without incurring a material diminution in performance or function;  
or

11.3.3 replace the Deliverables with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.

## 11.4 The Client warrants that it is the owner of the beneficial rights in the Input Material and the Input Material, and its use by Hypermotive for the purpose of providing the Goods and/or Services, will not infringe the copyright or any other rights or Intellectual Property Rights of any third party.

## 11.5 In the event of a breach of the warranty at Condition 11.4 above, Hypermotive shall be entitled, at its sole option and without prejudice to any other right or remedy it may have, to suspend provision of the Goods and/or Services without liability to the Client to allow the Client a maximum of 14 days to:

11.5.1 procure the right for Hypermotive to continue using the Input Material; or

11.5.2 make such alterations, modifications or adjustments to the Input Material so that it becomes non-infringing without incurring a material diminution in performance or function; or

11.5.3 replace the Input Material with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.

Provided that any times agreed for the provision of the Goods and/or Services shall be amended accordingly, the Client shall be additionally liable for Hypermotive's costs incurred during the period of suspension and, if the Client is unable to rectify the infringement in accordance with Condition 11.5.1, 11.5.2 or 11.5.3, Hypermotive shall be entitled to terminate the Contract in accordance with Condition 14.2.1.

11.6 Hypermotive warrants that the Deliverables will generally meet the objectives set out in the Proposal solely for the purpose set out in the Proposal, for a period of not more than 1 calendar year from the date of manufacture, defined as the Standard Warranty Period. Note that any storage, shipping or other time elapsed where the Goods are not in intended use, is accepted to form part of the Standard Warranty Period. Otherwise, Hypermotive gives no warranty that the Deliverables will be satisfactory for the purposes of the Client and the Client acknowledges and agrees that it is its sole responsibility to ensure the same. Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

11.7 Where Goods manufactured against the Proposal or manufactured to drawings or information supplied by the Client ('make to print') are required to have a Warranty period exceeding that of Hypermotive's Standard Warranty Period then Hypermotive may agree to offer an Extended Warranty Period subject to commercial agreement. Prior to consideration of an Extended Warranty Period, Hypermotive and the Client will agree a suitable Development Test and Validation Plan (DVP) to prove the performance of the Goods against a typical worst case duty cycle or operation during the Extended Warranty Period. This DVP will have clear, pre-agreed pass-fail or acceptance criteria. This DVP may be managed and delivered by Hypermotive or the Client according to an appropriate commercial agreement. The cost of remedying any failures or issues with the Goods during the DVP will be met by the Client according to an appropriate commercial agreement.

Hypermotive accept no Extended Warranties before the successful completion of the agreed DVP and the issuance of a statement from Hypermotive accepting the Extended Warranty Terms.



11.8 Where Hypermotive provides any Deliverables which contain or rely upon components, parts, software or other third party products, Hypermotive gives no warranty, guarantee or other term as to their quality, fitness for purpose or otherwise. Hypermotive shall to the extent possible assign to the Client the benefit of any warranty, guarantee or indemnity given by the supplier of the relevant components, parts, software or third party products to Hypermotive.

11.9 Hypermotive shall not be liable for any failure or delay in respect of Input Material under test, any defect arising from fair wear and tear, misuse, alteration, amendment or repair of the Deliverables.

11.10 Except in the case of death or personal injury caused by Hypermotive's negligence or the negligence of its employees or agents or as expressly provided for in these Conditions:

11.10.1 Hypermotive shall not be liable to the Client for any liability whether arising in contract or in tort including but not limited to negligence and breach of statutory duty, misrepresentation (unless fraudulent), any breach of warranty whether express or implied, any condition or other term, or any duty at common law for any loss of profit or indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of Hypermotive, its servants, agents or otherwise) which arise out of or in connection with the provision of the Goods and/or Services or their use by the Client; and

11.10.2 Hypermotive's total liability to the Client shall not exceed, in aggregate, the sum of £100,000 or the Price (of the contract) if greater and in any event shall be limited to a maximum of £1,000,000 in accordance with the level of Hypermotive's Insurances.

11.11 Hypermotive will use its reasonable endeavours to deliver the Deliverables in accordance with the timetable set out in the Proposal. The timetable is an estimate only and Hypermotive accepts no responsibility or liability, financial or otherwise, in the event that the estimated delivery schedule is not complied with. For the avoidance of doubt Hypermotive shall not be liable to reimburse the Client in respect of any delay payments or other penalties for which the Client may become liable to third parties whether or not Hypermotive was aware of such liability.

11.12 In the event that during the execution of the Services or during any subsequent development of the Deliverables an Engineering Design Defect is discovered which in the opinion of the Client is due to the default of Hypermotive, then the client shall notify Hypermotive within 30 days of receipt of Goods by the Client, and return any defect Goods, Materials, Deliverables to Hypermotive carriage paid.

11.13 Hypermotive shall investigate the Engineering Design Defect and if Hypermotive accepts the Clients' claim the Company shall have the choice of

11.13.1 rectifying the defect at Hypermotive's cost

or

11.13.2 crediting the Client's with the amount associated with the Goods or Services as given in the Proposal.

11.14 The Client may not charge Hypermotive for any work the Client carries out to rectify a defect themselves without written agreement from Hypermotive.

## 12 Confidentiality

12.1 The parties acknowledge and agree that the Confidentiality Agreement (if any) shall continue to apply in respect of the Contract. If there is not a Confidentiality Agreement in place between the parties, the following terms of this Condition 12 shall apply.

12.2 The parties (as a "Receiving Party") hereby acknowledge that the other (the "Disclosing Party") has provided to the Receiving Party Confidential Information and in respect of all such Confidential Information the Receiving Party will:

12.2.1 Treat it as confidential.

12.2.2 Restrict its disclosure to such of its employees, agents and professional advisors as have a need to know and subject always to such employees and agents being under a similar duty of confidentiality; and

12.2.3 Not disclose it to any third party without the prior written consent of the Disclosing Party.

12.3 The requirements of Condition 12.2 shall not apply to any Confidential Information which:

12.3.1 is or becomes common knowledge without breach of this Condition by the Receiving Party; or

12.3.2 was in the Receiving Party's possession prior to receipt from the Disclosing Party or developed for or by the Receiving Party at any time independently of any disclosure by the Disclosing Party; or

12.3.3 the Receiving Party is required to disclose by law or other competent authority provided that the Receiving Party notifies the Disclosing Party, if permitted by law, as soon as it receives such a request for disclosure and affords to the Disclosing Party all such reasonable assistance as the Disclosing Party may request to prevent or limit such disclosure.

## 13 Assignment

13.1 Subject to Condition 13.2 below, neither party may assign the Contract nor any of the benefits or liabilities hereof in whole or in part without the express prior written consent of the other party, save for the purpose of a solvent reconstruction or amalgamation.

13.2 Hypermotive is entitled to sub-contract any of its rights or obligations under the Contract, whether in connection with the delivery of the Goods and/or Services or otherwise, to any one or more of the Associated Companies as it may determine in its sole discretion.

## 14 Termination

14.1 The Contract shall continue in full force and effect until completion by both parties of their respective obligations hereunder unless terminated earlier in accordance with Condition 14.2.

14.2 This Agreement may be terminated by:

14.2.1 either party if the other continues in default of any obligation imposed upon it hereunder for more than 30 days after written notice has been dispatched by that party by recorded delivery or courier requesting the other to remedy such default.

14.2.2 Hypermotive on written notice to the Client in the event that the Client fails to pay within the period allowed and/or fails to make payment after a further request for payment;

14.2.3 either party on written notice to the other in the event that the other makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the other or the other ceases, or threatens to cease, to carry on business; or

14.2.4 by either party on 30 days written notice to the other if an event of Force Majeure affects the other party from properly performing its obligations under the Contract for a continuous period of at least 4 weeks.

14.3 In the event of termination of the Contract for any reason, the Client shall pay Hypermotive for all Goods, Work in Progress or Services performed up to the date of termination. Subsequent valuation of work in progress will be at the discretion of Hypermotive

14.4 In the event of termination of the Contract for any reason (other than by the Client pursuant to Condition 14.2.1), the Client shall additionally pay Hypermotive for all costs incurred after the date of termination in winding down the Services including, inter alia and without limitation the dismantling of any test facilities, the storage and/or return of Input Material, delivery of the Deliverables the use of Hypermotive's facilities and resources which are unavailable as a result of the termination, any third party supplier costs in respect of goods and/or services which cannot be terminated and the labour costs for Hypermotive's personnel and/or sub-contractors, involved in the performance of the Goods and/or Services, for up to a maximum of four weeks from termination or such shorter period until Hypermotive can place such personnel with alternative work. The Client shall also pay 10 per cent of the Price outstanding at the date of termination and which the parties agree is a reasonable pre-estimate of the loss Hypermotive will suffer as a result of any such termination.

14.5 Unless otherwise specified in the Proposal, the Input Material will, at Hypermotive's sole option as notified to the Client, be returned to the Client by Hypermotive and/or made available for collection from Hypermotive and if the Client is responsible for collecting any of the Input Material from Hypermotive, such collection may be made at any time during business hours and on at least 48 hours' notice to Hypermotive after Hypermotive has given notice that the Input Material are available for collection.

14.6 If the Client fails to collect any Input Material or fails to provide delivery instructions within the time stated in the notification then, without prejudice to any other right or remedy which Hypermotive may have, Hypermotive may at its sole discretion:

14.6.1 Store the Input Material at its own premises or elsewhere and charge the Client for its reasonable costs including without limitation insurance for storage; and/or

14.6.2 On notice to the Client, destroy the Input Material and charge the Client for its reasonable costs.

14.7 Any termination of the Contract shall not affect the accrued rights and obligations of the parties nor shall it affect any provision which is expressly or by implication intended to come into force or continue in force on or after such termination.

## 15 Delays

15.1 Hypermotive shall not be responsible for any delay caused by:

15.1.1 the inadequacy or the delay in provision of any Input Material to be supplied by the Client and/or third party suppliers whether or not nominated by the Client;

15.1.2 the failure or malfunction of any Input Material under test.

In the event of such delay Hypermotive may extend the timetable and charge the Client for any additional cost incurred in re-allocating resources.

15.2 Where such a delay prevents the execution, or completion of the Goods or Services by Hypermotive, Hypermotive reserve the right to invoice the Client for the amount associated with the Goods or Services affected, on informing the Client of the delay and once 15 days delay has elapsed. The Client shall be liable to settle the invoice in accordance with 5.3

15.3 The Client will not be responsible for any delay caused by the failure of Hypermotive to provide necessary data to the Client or failure to support the programme activities as set out in the Proposal supplied by Hypermotive.

## 16 Taxes

16.1 The Price is exclusive of all taxes including but not limited to VAT and Customs and import duties which will be invoiced to and payable by the Client in addition to the Price.

16.2 If Hypermotive is liable for any tax levied by a foreign government in connection with the provision of the Goods and/or Services and/or the supply of the Deliverables the Client shall provide Hypermotive with the necessary tax certificates to enable Hypermotive to recover the taxes to the greatest extent possible under any agreement for the avoidance of double taxation between the UK Government and the foreign government levying the tax charge.

16.3 If any deduction or withholding is required by any law, practice or regulation (whether or not such practice or regulation has the force of the law) in respect of any payment due from the Client to Hypermotive under the Contract or is in any event made, the relative sum payable by the Client shall be increased so that, after making the minimum deduction or withholding so required, the Client shall pay to Hypermotive and the Client shall receive and be entitled to retain on the due date for payment a net sum at least equal to the sum which it would have received had no such deduction or withholding been required to be, or had in fact been made.

## 17 Variations

17.1 To allow flexibility within the Goods and/or Services but with appropriate controls a system of project variation requests will be used. The project variation request may be Client or Hypermotive driven and may include, inter alia, changes to the objectives, scope of work, Deliverables, timing, responsibilities, assumptions, Price or delays caused by the Client and/or third party suppliers, whether or not nominated by the Client, and shall be agreed by the parties in writing in a timely manner so as not to prejudice any timing schedule agreed between the parties. Hypermotive shall be entitled to charge for any additional cost incurred as a result of any project variation. Subject to Condition 3.3, no project variation shall take effect unless and until agreed to in writing by the Project Manager of Hypermotive or such other person who may be notified by Hypermotive to the Client as duly authorised for the purposes of this Condition.

## 18 Insurance

18.1 The Client will list all Input Material supplied to Hypermotive and will advise Hypermotive of the value of that Input Material prior to delivery so that Hypermotive may, subject to verification, take steps to insure the same for such value whilst at Hypermotive's premises and under Hypermotive's control. Hypermotive shall not be obliged to insure Input Material which is being used by employees or representatives of the Client at Hypermotive's premises or elsewhere.

## 19 General

19.1 The Client shall not be entitled to exercise any right of set off arising out of the Contract or otherwise.

19.2 These Conditions, the Proposal and the Confidentiality Agreement (if any) embody the entire understanding of the parties in respect of the provision of the Goods and/or Services by Hypermotive and all and any prior statements, undertakings, documents or promises whether written or oral, express or implied made by either party shall have neither force nor effect.

19.3 If any of the provisions of these Conditions is found by any Court, arbitrator or other competent authority to be void or otherwise unenforceable either in whole or in part such provision or part thereof shall be deleted and the remaining conditions shall apply.

19.4 Neither party shall be liable to the other party for the non-performance or delay in the performance of any of its obligations hereunder, other than for payment, due to events of Force Majeure. Upon the occurrence of such an event of Force Majeure, the affected party shall immediately notify the other party with as much detail as possible and shall promptly inform the

other party of continuing developments. Once the event of Force Majeure is removed or ended the affected party shall perform its obligations with all due speed unless the Contract has been terminated in accordance with Condition 14.2.4.

19.5 Nothing in these Conditions shall create a partnership or joint venture between the parties hereto and, save as expressly provided in these Conditions, neither party shall enter into or have authority to enter into any engagement or make any representations or give any warranty either express or implied on behalf of or pledge the credit of or otherwise bind or oblige the other party.

19.6 Nothing contained in these Conditions shall prevent either party from working with any third party.

19.7 No failure or delay by Hypermotive in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by Hypermotive of any breach of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.

19.8 Any notice required or permitted to be given under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this Condition to the party giving the notice.

19.9 Save for Associated Companies, a person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

19.10 The language for communication, training and training manuals and correspondence between the parties in respect of the provision of the Goods and/or Services shall be English.

## 20 Law and Dispute Resolution

20.1 The parties agree that the Contract and these Conditions shall be governed and construed in accordance with English law and, subject to Condition 20.2 below, the parties submit to the exclusive jurisdiction of the English Courts.

20.2 Should any dispute arise out of the Contract or these Conditions, including the interpretation thereof or any other matter specifically referred to herein, the parties agree to negotiate for the settlement thereof by the following procedure:

20.2.1 The parties shall use all reasonable endeavours to promptly negotiate in good faith and settle amicably any dispute that may arise out of or relate to the Contract or a breach thereof within 14 days of notification by one party to the other of such dispute. If any such dispute cannot be settled amicably through ordinary negotiations by appropriate representatives of the parties within such 14 day period, the dispute shall be immediately referred to the Project Directors of both parties who shall meet (either by themselves or through their authorised representatives and either in person, by telephone or through such other means of communication as may be agreed between them) in good faith within 14 days of the request of either party in order to attempt to resolve the dispute within a further 14 days from the initial date of such meeting.

20.2.2 In the event that the parties are unable to resolve the dispute pursuant to Condition 20.2.1, the matter at the election of either party may be referred to mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure (“the Model Procedure”). To initiate a mediation, a party by its Managing Director shall give notice in writing (“ADR Notice”) to the other party to the dispute addressed to its Duly Authorised Officer requesting a mediation in accordance with the Model Procedure. The place of mediation shall be London, England. The language of the mediation and agreement shall be in English.

In the event that the parties are unable to resolve the dispute pursuant to Condition 20.2.2 within 6 weeks, or either party at any time, acting reasonably, no longer considers that the matter may be resolved by mediation, the matter may, at the election of either party, be referred to and finally resolved by the International Chamber of Commerce (“ICC”) in Paris. Such arbitration shall be conducted in the English language and in accordance with the ICC Conciliation and Arbitration Rules. The decision of such arbitration shall be final and binding upon the parties.

<ENDS>