

## TROCARE TERMS AND CONDITIONS

### 1. BASIS OF CONTRACT

- 1.1 Trotec shall supply and the Customer shall purchase the Services, subject to these Conditions, which supersede any other terms which the Customer seeks to impose or incorporate or which are implied by law, trade, custom, practice or course of dealing. Trotec may appoint subcontracts to perform some or all of the Services in accordance with these Conditions.
- 1.2 To the extent there is any conflict or inconsistency between:
- 1.2.1 the Confirmation;
  - 1.2.2 these Conditions;
  - 1.2.3 any Supplementary Terms;
  - 1.2.4 any documents referred to in these Conditions; and
  - 1.2.5 the Order,
- the earlier listed document shall prevail over a latter listed document to the extent of the conflict or inconsistency.
- 1.3 Trotec supplies New Machines and performs Services to business and trade customers only. For the avoidance of doubt, Trotec does not supply the Machines or perform the Services to consumers and the Customer acknowledges it is not acting in the capacity of a consumer.
- 1.4 These Conditions apply only to Services performed in the United Kingdom.

### 2. ORDERS

- 2.1 A Quotation given by Trotec shall constitute an invitation to order the Services and is not an offer by Trotec. Quotations are only valid for the period specified within the Quotation or if no period is specified the Quotation shall only be valid for a period of twenty (20) Business Days from its date of issue (**Validity Period**). For the avoidance of doubt, Trotec has the right to amend the price of any Quotation that has been issued but not accepted within the Validity Period.
- 2.2 The Order constitutes an offer by the Customer to purchase the Services specified in the Quotation, subject to these Conditions. The Customer shall ensure that the terms of any order (including the Specification supplied by the Customer) are complete and accurate in all material respects.
- 2.3 The Order shall only be deemed to be accepted when Trotec issues written acceptance of the Order to the Customer (**Confirmation**), or if (if earlier) Trotec performs the Services in accordance with these Conditions, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.4 Each Order gives rise to a Contract, and each Contract is separate from each other Contract.
- 2.5 The Contract will continue for an initial term of twelve (12) months from the Commencement Date (**Initial Term**) after which it shall automatically renew for further periods of twelve (12) months (**Renewal Period**), unless it is terminated by either party no later than two (2) months prior to the end of the Initial Period or any Renewal Period, provided always that the duration of the Contract shall not exceed ten (10) consecutive years.
- 2.6 Where the Customer places an Order in respect of Outdated Machines Trotec shall have the right to inspect and/or verify the suitability of the Outdated Machines before accepting the Order.

- 2.7 Unless otherwise agreed in writing, no Order may be cancelled by the Customer. If the parties agree that the Customer may terminate the Order, the Customer shall indemnify and hold harmless Trotec against all Loss incurred by Trotec as a result of the cancellation.
- 2.8 Trotec reserves the right to make any changes to the Services and amend the Specification and TroCare Information Booklet if such changes:-
- 2.8.1 are necessary to comply with any applicable Regulations or safety requirements; or
  - 2.8.2 do not materially affect the nature or quality of the Services,
- and Trotec shall notify the Customer within a reasonable time in the event any such changes are being made to the Services.

### **3. PRICE**

- 3.1 The Prices specified are valid only for the Services specified in the Confirmation or as otherwise agreed in writing.
- 3.2 If no Price is specified in the Confirmation or otherwise agreed in writing, the Price for the Services shall be as set out in Trotec's price list which is available upon request as at the date of performance of the Services.
- 3.3 Trotec may charge an increased Price when the cost of supplying the Services increases for any reason which is beyond the reasonable control of Trotec including, but not limited to, Trotec's increased costs of manufacturing, increased costs of duty, carriage, freight, insurance or raw materials, or where the supply of the Services or all other work in progress is varied or delayed due to any of the acts or omissions of the Customer, including a failure to supply information or failure to supply information which is accurate in all material respects, delay in approving drawings and specifications or alteration of requirements or otherwise.
- 3.4 If Trotec exercises its right to increase the Price in accordance with Condition 3.3, it shall provide the Customer 30 days' notice of the proposed Price increase which shall take effect upon expiry of such notice period.
- 3.5 Unless otherwise stated, prices are exclusive of value added tax (VAT). VAT will be applied and will be shown on the invoice at the applicable rate.

### **4. PAYMENT**

- 4.1 Time for payment in respect of the Services shall be of the essence and unless otherwise agreed by Trotec in writing, payment shall be made in full and cleared funds to Trotec or its nominee:
- 4.1.1 within thirty (30) days' of the invoice date; and
  - 4.1.2 immediately following invoice for any other additional costs, (including but not limited to Spare Parts and Consumables).
- 4.2 Trotec may at any time, suspend the performance of the Services if the Customer fails to pay any amount due to Trotec by the due date for payment, whether or not such liability to pay arises under the Contract or otherwise.
- 4.3 Trotec may require certain payment in advance of the performance of Services, such details will be included in the Confirmation. Any payments made in advance are non-refundable.
- 4.4 The currency of payment in respect of the Services and all other work in progress will be pounds sterling unless otherwise agreed and VAT will be charged in addition at the applicable rate.

- 4.5 The Customer shall pay Trotec interest on overdue amounts in accordance with the UK Late Payment of Commercial Debts (Interest) Act 1998 accruing on a daily basis until payment is made, after, as well as before, judgment.
- 4.6 In the event of the Customer's failure to make payments in respect of the Services and any other work in progress by the due date for payment, all discounts and bonuses granted to the Customer by Trotec shall cease to apply and Trotec shall be entitled to: (i) postpone further performance of the Services under the Contract or any other contract with the Customer; or (ii) cancel any such contract with the Customer without penalty and without prejudice to any of Trotec's rights; and/or (iii) charge the Customer for any Loss incurred or suffered as a result of issuing late payment reminders to the Customer.
- 4.7 Payment may not be refused or delayed by reason of any defect in the Services. The Customer shall make all payments under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 4.8 If the supply of the Services is suspended or terminated for any reason and payment for such Services is due to Trotec, Trotec may raise an invoice in respect of the Services performed, including the delivery of any Spare Parts and Consumables and all other work in progress which shall become immediately due and payable by the Customer.

## **5. PERFORMANCE OF THE SERVICES**

- 5.1 Trotec will provide the Services in accordance with the TroCare Information Booklet (including without limitation to the supply of any Spare Parts in accordance with the specific usage and maximum limitations for the replacement of individual components as particularly described therein) or as otherwise agreed between the parties in writing.
- 5.2 Trotec shall endeavour to meet any performance dates for the Services specified in the Confirmation or the TroCare Information Booklet. Unless otherwise stated, dates for delivery and performance are approximate only and the time of delivery and performance is not of the essence.
- 5.3 It is a condition of the Contract that the Customer receives or arranges for the receipt or performance of the Services when performance is effected by Trotec, and the Customer shall provide and prepare the Location, procure all licences and other authorisations required for Trotec or its subcontractor (as appropriate) to perform the Services and take such other steps as Trotec may reasonably require.
- 5.4 The Customer hereby grants Trotec and its personnel, employees, agents, consultants and/or subcontractors (**Trotec Personnel**) full, safe and uninterrupted access, (including remote access, where appropriate), to the Premises and systems of the Customer or any other entity as may reasonably be required to perform the Services and to inspect or remove the Machine if the Customer fails to comply with its obligations under the Contract. Unless otherwise agreed, such access shall be permitted within Business Hours.
- 5.5 Where the Services are to be performed at Premises, the Customer shall provide or arrange for the provision of adequate working space and facilities for use by Trotec Personnel and take reasonable care to ensure their safety by notifying them in advance of any of the policies of the Customer or of any other entity which must be complied with at the Premises.
- 5.6 The Customer shall procure that its employees and representatives present at the Premises when the Services are being performed comply in all respects with the health and safety instructions of the Trotec Personnel performing the Services. If such health and safety instructions are not complied with (in full or in part), Trotec shall be entitled to: (i) suspend performance of the Services under the Contract or any other contract with the Customer; or (ii) cancel any such contract with the Customer without penalty and without prejudice to any of Trotec's rights; and/or (iii) charge the Customer for any costs including without limitation the cost of issuing late payment reminders to the Customer.

- 5.7 The Customer shall: (i) comply with the instructions of Trotec or Trotec Personnel in performing the Services; (ii) co-operate with Trotec in performing the Services and provide any assistance or information as may reasonably be required by Trotec; (iii) make available a person familiar with the Services to liaise with Trotec; and (iv) report faults promptly to Trotec including a description of the fault, containing as much detail as possible, and of the circumstances at the time it occurred.
- 5.8 The Customer may request in writing to postpone the performance of the Services up to two (2) Business Days before the performance date specified in the Confirmation, or as otherwise agreed between the parties. Where Trotec agrees to postpone performance of the Services, the parties shall agree in writing an alternative performance date.
- 5.9 Where a performance date cannot be agreed under Condition 5.8 or in the event that Trotec Personnel is unable to perform the Services for reasons within the Customer's control, Trotec shall be discharged from performing the Services and Trotec shall be entitled to charge the Customer for the reasonable costs incurred as a result of the postponement, including any travel costs.

## **6. MAINTENANCE SERVICES**

- 6.1 The Trotec Personnel shall attend the Premises approximately every fifty-two (52) weeks to perform the Annual Maintenance. The Trotec Personnel shall perform the Annual Maintenance during Business Hours at such date and time as may be agreed in advance between the Customer and Trotec from time to time.
- 6.2 The Customer shall promptly inform Trotec (and provide details in writing via email to [service-uk@troteclaser.com](mailto:service-uk@troteclaser.com)) if it reasonably believes that the Machine is defective, malfunctioning or otherwise not in Good Working Order within five working days of discovering the issue. If the Customer does not notify and provide Trotec with such details of the issue in accordance with the timescales in this Condition 6.2, Trotec will have no obligation to remedy the issue in accordance with the timescales specified within the other provisions of this Condition 6.2 but will still otherwise perform the Services in accordance with these Conditions.
- 6.3 Where the Customer has notified Trotec of a defect with the Machine in accordance with Condition 6.2, Trotec shall use all reasonable endeavours to contact the Customer to resolve the issue through remote diagnosis within a reasonable time. Where the issue cannot be resolved remotely and Trotec decides in its sole discretion that an on-Premises inspection is required, Trotec shall use reasonable endeavours to arrange with the Customer for one of its representatives to attend the Premises within a reasonable time during Business Hours to inspect the Machine.
- 6.4 If during the performance of the Annual Maintenance the Trotec Personnel finds the Machine to be in Good Working Order, it shall issue a certificate (service report) to the Customer confirming this.
- 6.5 If, during the performance of the Services and within the warranty period, the Trotec Personnel reasonably believes the Machine to be defective, malfunctioning, to have failed or be otherwise not in Good Working Order, Trotec shall, subject to Condition 7, perform the Corrective Maintenance Services. If it is not reasonably practicable to do so during that visit to the Premises (or it is not reasonably practicable to do so during Business Hours) the Trotec Personnel shall arrange for a further visit to the Premises within Business Hours to complete the repair.
- 6.6 Where it is not reasonably practicable for the Trotec's Personnel to perform required Corrective Maintenance Services under this Condition 6 at the Premises on their first visit the Trotec Personnel shall in their sole discretion arrange for a further visit to the Premises within Business Hours to complete the repair, or remove or arrange for the removal of the Machine (or part of the Machine, if applicable) for repair off-Premises.
- 6.7 Unless otherwise stated in the TroCare Information Booklet or as agreed between the parties in writing, where the Machine is found not to be in Good Working Order and the Customer has an

applicable TroCare Protect Package, Trotec shall, at its discretion, repair or replace the defective parts of the Machine with Spare Parts for no additional charge. The Customer will be responsible for the cost of any Consumables required to restore the Machines to Good Working Order. This Condition 6.6 is subject to Condition 7.1.

- 6.8 Unless otherwise stated in the TroCare Information Booklet or as agreed between the parties in writing, where the Customer does not have an applicable TroCare Protect Package Trotec shall issue a Quotation to the Customer for the services performed, Spare Parts and/or Consumables required to restore the Machine to Good Working Order.
- 6.9 When performing the Corrective Maintenance Services, Trotec may (in its sole discretion) replace the defective Machine in its entirety instead of repairing and/or replacing the defective parts with Spare Parts in accordance with Condition 6.6. For the avoidance of doubt, repairing or replacing the defective parts or the defective Machine in accordance with Conditions 6.6 and 6.9 shall be the Customer's sole and exclusive remedies and Trotec have no further liability to the Customer for the performance of the Corrective Maintenance Services.
- 6.10 Upon completion of the repair of the Machines or replacement of the defective parts, Trotec shall submit its invoice for the Services, Spare Parts and/or Consumables and for any additional services provided or costs incurred to the Customer for payment. Save for where the Customer has the right to make a claim under the applicable TroCare Protect Package, the Customer shall pay the invoice in accordance with Condition 4.1 and upon successful claim under the applicable TroCare Protect Package or upon payment of such invoice Trotec shall issue a certificate to the Customer confirming that the Machine is in Good Working Order.
- 6.11 Trotec shall not be liable for any delay in providing the Services if in Trotec's reasonable opinion it needs to remove the Machine (or part of the Machine, if applicable) for repair off-Premises and/or the Customer unreasonably refuses this request.
- 6.12 All Spare Parts shall be either new, or reconditioned or reassembled Spare Parts which are equivalent to new Spare Parts in performance. All Consumables shall be new.
- 6.13 Subject to Condition 6.14, Trotec will transfer to the Customer, with full title guarantee and free from all third party rights, all the Spare Parts and Consumables that it provides to the Customer, and the Spare Parts and Consumables shall become part of the Machine immediately upon being installed or incorporated into the Machine.
- 6.14 All parts which are removed from the Machine as a result of Trotec performing the Corrective Maintenance Services in accordance with Condition 6.5 and 6.6 will transfer to Trotec with full title guarantee and free from all third party rights immediately upon removal from the Machine.

## **7. EXCLUDED MAINTENANCE**

- 7.1 Trotec shall not be obliged to perform the Corrective Maintenance Services where:
  - 7.1.1 the damage or defect is as a result of the Customer's failure to follow the operating manual, maintenance instructions and/or other handling instructions provided by Trotec, including but not limited to in respect of laser safety and all required technical pre-conditions before installation;
  - 7.1.2 the Customer has failed to permit Trotec's personnel to perform or made it impracticable to perform the required Corrective Maintenance Services in accordance with Condition 6 at the Premises;
  - 7.1.3 the damage or defect is as a result of the improper installation and commissioning, improper handling, transport and/or repair by persons other than Trotec or its employees or agents, unless approved in writing by Trotec;

- 7.1.4 the Customer is using the Machine with accessories, consumables, parts (including parts not manufactured by Trotec), equipment or materials not supplied or approved in writing by Trotec;
  - 7.1.5 any maintenance, alteration, modification or adjustments performed by persons other than Trotec or its employees or agents, unless approved in writing by Trotec;
  - 7.1.6 the Customer or third party has moved the Machine from the Location, unless such re-location has been pre-approved in writing by Trotec;
  - 7.1.7 the Customer's use of the Machine is in breach of any of the provisions of the Contract or the agreement under which the Machine was supplied;
  - 7.1.8 there is a failure, interruption or surge in the electrical power or its related infrastructure connected to the Machine;
  - 7.1.9 there is a failure or malfunctioning of the air conditioning or other environmental controls required for the normal operation of the Machine, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer resulting in the Machine not being operated at the specified room temperature, cleanliness, humidity, or electrical safety;
  - 7.1.10 the defects are due to external damage beyond the control of Trotec, including but not limited to surface damage and damage resulting from water or fire;
  - 7.1.11 the Customer has neglected or misused the Machine, including but not limited to in respect of the hours of usage and the types of materials processed;
  - 7.1.12 the Services have not been carried out for reasons which the Customer is responsible;
  - 7.1.13 the installation and/or commissioning of equipment and/or the training which the Customer has received has been carried out by persons other than Trotec or its employees or agents, unless approved in writing by Trotec; and
  - 7.1.14 the Customer has failed to notify any defects to Trotec in accordance with Condition 6.2, including where this has, in the reasonable opinion of Trotec Personnel, caused deterioration to the Machine which would not have transpired if Condition 6.2 has been complied with.
- 7.2 If on inspection of the Machine Trotec reasonably believes that the defect in or malfunctioning of the Machines is the result of any cause set out in Condition 7.1 then Trotec shall have the right to:
- 7.2.1 refuse to perform the Services without further liability to the Customer; and
  - 7.2.2 perform additional services which are in addition to any Services specified in an Order and the Customer shall pay for such additional work on a time and materials basis, in respect of the time incurred by Trotec in inspecting and determining the cause of the defect in or malfunctioning of the Machine and repairing and/or replacing any defective Machine or parts (if applicable) in accordance with Condition 4.1.

## **8. CUSTOMER'S OBLIGATIONS**

- 8.1 The Customer shall:
  - 8.1.1 ensure that the terms of the Order and any information it provides to Trotec is complete and accurate;

- 8.1.2 use the Machines only in accordance with the instructions and recommendations of the manufacturer of the Machine or as may be advised in writing from time to time by Trotec;
  - 8.1.3 keep the Machine in the environmental conditions recommended by the manufacturer of the Machine or as may be advised from time to time by Trotec;
  - 8.1.4 keep all materials, equipment, documents and other property of Trotec (**Trotec Materials**) at the Customer's premises in safe custody at its own risk, maintain Trotec Materials in good condition until returned to Trotec, and not dispose of or use Trotec Materials other than in accordance with Trotec's written instructions or authorisation;
  - 8.1.5 provide Trotec with such information and materials as Trotec may reasonably require in order to supply the Services and diagnose any default with the Machine and the Customer shall ensure that such information is complete and accurate in all material respects;
  - 8.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - 8.1.7 provide Trotec personnel with the access required to perform the Corrective Maintenance Services at their Premises in accordance with Condition 6;
  - 8.1.8 notify Trotec promptly if the Machine is discovered to be defective or malfunctioning or has failed or is otherwise not in Good Working Order in accordance with Condition 6.2;
  - 8.1.9 not allow any other person than Trotec Personnel to adjust, maintain, repair, replace or remove the Machine or any part of it, unless otherwise agreed in writing by Trotec;
  - 8.1.10 not move the Machine from the Location without the prior written consent of Trotec (such consent not to be unreasonably withheld or delayed); and
  - 8.1.11 comply with any additional obligations as set out in the TroCare Information Booklet.
- 8.2 If Trotec's performance of any of its obligations under the Contract are prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation set out in these Conditions (**Customer Default**) then:
- 8.2.1 without limiting or affecting any other right or remedy available to it, Trotec shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Trotec's performance of any of its obligations;
  - 8.2.2 Trotec shall not be liable for any Loss sustained or incurred by the Customer arising directly or indirectly from Trotec's failure or delay to perform any of its obligations as set out in this Condition 8; and
  - 8.2.3 the Customer shall reimburse Trotec on written demand for any Loss sustained or incurred by Trotec arising directly or indirectly from the Customer Default, including but not limited to any travel expenses and call out charges of the Trotec Personnel.

## 9. WARRANTIES

- 9.1 Trotec warrants to the Customer that the Services will be performed in accordance with the Specification or if there is no agreed specification, using reasonable care and skill.
- 9.2 Trotec shall not be liable under the warranty detailed at Condition 9.1 (or any other warranty, condition or guarantee) if: (i) the Price for the Services has not been paid by the due date for payment; (ii) the Services are provided based on inaccurate or misleading information provided

by the Customer; (iii) the Services are provided in accordance with the instructions of the Customer; or (iv) the Customer is in breach of the Contract.

## **10. ACCEPTANCE**

- 10.1 The Customer shall accept all the Services which meet the requirements of Condition 9.1 in all material respects.
- 10.2 The Customer shall be deemed to have accepted the Services where: (i) the Customer asks for or agrees to the repair of the Services; (ii) the Services are delivered to a third party; (iii) the Customer has not notified Trotec of a defect or error in relation to the Services in accordance with Condition 10.3 and 10.4; and/or (iv) the Customer has notified Trotec that it accepts the Services.
- 10.3 The Customer must notify Trotec of Non-conforming Services by providing written notice to Trotec within five (5) Business Days of completion of the relevant part of the Services.
- 10.4 If Trotec confirms to the Customer that it has a valid claim in relation to Non-conforming Services which has been notified to Trotec under Condition 10.3, Trotec shall re-perform the Non-conforming Services at its own cost within a reasonable period of time. No representation or warranty is given by Trotec that all faults will be fixed or will be fixed within a specified period of time.
- 10.5 Any replacement goods or Spare Parts provided by Trotec in accordance with Condition 10.4: (i) may contain new or refurbished materials; and (ii) shall have the same functionality as the parts being replaced. The dimensions and design of any replacement goods may deviate from the original Machine, provided that such deviations do not materially affect the quality or performance of such goods.
- 10.6 The remedies set forth in this Condition 10 shall be the Customer's sole and exclusive remedies for any Non-conforming Services supplied by Trotec or failure by Trotec to perform the Services and Trotec shall have no further liability to the Customer in respect thereof.

## **11. LIABILITY**

- 11.1 The following sets out the entire financial liability of Trotec in respect of the following (each being an "**Event of Default**"): (i) a breach by Trotec of the Contract; and (ii) a tortious act or omission (including negligence), breach of statutory duty, misrepresentation or misstatement, of Trotec in connection with the Contract.
- 11.2 Nothing in the Contract shall operate to limit or exclude Trotec's liability for personal injury by its negligence, fraud, fraudulent representation or any other liability to the extent it cannot be excluded or limited by law.
- 11.3 Subject to Condition 11.2 and any specific limitations and exclusions under these Conditions, Trotec's total liability for all Events of Default arising from or in connection with the performance of the Services shall not exceed an amount equal to the higher of (i) the value of the Price payable for the Services; and (ii) one hundred thousand pounds (£100,000).
- 11.4 All warranties, conditions or terms not set out in the Contract and which would otherwise be implied or incorporated into the Contract by statute, common law or otherwise are hereby excluded except to the extent they may not be excluded or limited by law.
- 11.5 Nothing in these Conditions shall restrict or limit a party's general obligation at law to mitigate any Loss it may suffer or incur as a result of any event that may give rise to a claim under or in connection with this Contract.
- 11.6 Subject to Condition 11.2, in no event shall Trotec be liable, whether for breach of contract, any tortious act or omission (including negligence) or otherwise, under or in connection with the Contract for: (i) loss of profit; (ii) loss of sales or business; (iii) loss of agreements or contracts; (iv) loss of anticipated savings; (v) loss of use or corruption of software, data or information; (vi)



loss of damage to goodwill; and/or (vii) any consequential or indirect loss, and regardless of whether the Loss would arise in the ordinary course of events, is reasonably foreseeable, is in the contemplation of the parties, or otherwise.

- 11.7 The Customer undertakes that it shall not bring any claim against any individual employee or officer of Trotec in respect of or relating to the Contract.
- 11.8 The Price of the Services and all other work in progress is determined on the basis of the exclusions from and limitations of liability contained in these Conditions. The Customer accepts that these exclusions and limitations of liability contained in these Conditions are reasonable because (amongst other matters) the likelihood that otherwise the amount of damages awardable to the Customer against Trotec for certain acts or omissions of Trotec may be disproportionately greater than the price of the Services and all other work in progress.
- 11.9 The Customer shall only be entitled to bring a claim against Trotec where the Customer issues legal proceedings against Trotec within the period of six (6) months commencing on the date upon which the Customer ought reasonably to have known of its entitlement to bring a claim.

## **12. INTELLECTUAL PROPERTY RIGHTS**

- 12.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Trotec (or its licensor) notwithstanding that any specification may have been prepared in whole or in part by or on behalf of the Customer and, to the extent not otherwise owned by Trotec (or its licensor), the Customer hereby assigns all such right, title and interest (including all Intellectual Property Rights) in any specification prepared in whole or in part or on behalf of the Customer to Trotec.
- 12.2 The Customer warrants that any specification or other information provided by or on its behalf for use by Trotec will not infringe the Intellectual Property Rights or other rights of any third party, and the Customer shall indemnify Trotec from and against all and any Loss suffered or incurred by Trotec (or its affiliates) arising out of or in connection with any such infringement or alleged infringement.
- 12.3 The Customer shall, promptly at Trotec's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Trotec may from time to time require for the purpose of securing for Trotec the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to Trotec in accordance with Condition 12.2.

## **13. TERMINATION**

- 13.1 Trotec may (without limiting any other remedy):
- 13.1.1 at any time terminate the Contract by giving written notice to the Customer if: (i) the Customer commits any breach of the Contract and (if capable of remedy) fails to remedy such breach within fifteen (15) days after being required by written notice to do so; (ii) an Insolvency Event occurs in relation to the Customer; or (iii) if the Machine is relocated either outside the EMEA region or relocated without Trotec's prior approval in writing; and
- 13.1.2 at any time, in its sole discretion, terminate the Contract by giving no less than three (3) months' notice to the Customer.
- 13.2 The Customer may not, without the prior written agreement of Trotec, terminate the Contract (in whole or in part) once Trotec has issued its Confirmation.
- 13.3 Upon termination of the Contract for whatever reason, the Customer's right to receive the Services shall cease automatically with immediate effect and to the extent not already paid, all charges for the Services shall become immediately due and payable by Customer to Trotec.

- 13.4 Termination of the Contract does not affect: (i) the rights or liabilities of the parties which have accrued on or before termination; and (ii) the continuance in force of Conditions 1, 6.13, 11, 12, 13, 14, 18 and 20.10 which survive termination of the Contract.

#### **14. VARIATION**

- 14.1 Subject always to Conditions 2.8 and 3.3, an amendment to this Contract is ineffective unless it is in writing, expressly purports to amend this Contract and is executed by Trotec, such amendments to be notified to the Customer from time to time.

#### **15. INDEMNITY**

- 15.1 Except to the extent Trotec may be liable to the Customer under the Contract, the Customer shall indemnify Trotec against all and any Loss incurred by Trotec:

15.1.1 arising in connection with Trotec's use of any information, instructions, specifications, materials or products supplied by the Purchaser (as applicable) to Trotec in respect of the Machines and/or Services;

15.1.2 toward a third party arising out of or in connection with the Machine and any materials (including the Spare Parts and Consumables) supplied by Trotec or their operation or use, or the performance or use of the Services, and whether arising by reason of the negligence of Trotec or otherwise;

15.1.3 as a consequence of the Purchaser's delay, breach or other failure to perform any of its obligations under the Contract; and/or

15.1.4 as a result of or in connection with any act, failure to act or omission of the Customer which causes Trotec to be in breach or delay or otherwise fail to perform its own obligations under any Supplementary Terms it has entered into with the Customer in connection with the Machines, the Services, the Contract or otherwise.

- 15.2 The Customer represents and warrants that it has the types of insurance as are customary for persons and entities in its line of business, with sufficient coverage for its actual and potential liabilities hereunder and shall provide to Trotec with a certificate of such insurance (or equivalent) upon request.

#### **16. DATA PROTECTION**

- 16.1 Terms defined in Data Protection Law shall have the same meaning when used in these Conditions.

- 16.2 References to a law of the European Union include a reference to that law as incorporated into the laws of the United Kingdom at any time after the United Kingdom ceases to be a Member State of the European Union.

- 16.3 Trotec and the Customer shall each ensure that it shall comply with the provisions and obligations imposed on it by Data Protection Law.

- 16.4 Nothing in the Contract or the arrangements contemplated by it is intended to construe either party as:

16.4.1 the processor of the other party; or

16.4.2 joint controllers with one another,

with respect to personal data that is shared by one party with the other.

## **17. FORCE MAJEURE**

- 17.1 Trotec shall have no liability if it is delayed, prevented or hindered in performing its obligations under the Contract due to circumstances beyond its reasonable control including, without limitation, acts of God, breakages of machinery, shortages of materials or utilities, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## **18. CONFIDENTIALITY**

- 18.1 Each party undertakes to the others that it shall keep confidential and shall not at any time disclose to any person any Confidential Information concerning the other party, except as permitted by Condition 18.2.
- 18.2 Each party may disclose the other party's Confidential Information: (i) to its employees, officers, representatives or advisers who need to know such information. Each party shall procure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this Condition 18.2; and (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 18.3 No party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.
- 18.4 Each party undertakes to keep separate from all other information all Confidential Information in its possession or control.
- 18.5 The provisions of Condition 18 shall not apply to Confidential Information to the extent that it is or was:
- 18.5.1 already in the possession of the other free of any duty of confidentiality on the date of its disclosure;
  - 18.5.2 in the public domain other than as a result of a breach of Clause 18.1;
  - 18.5.3 required to be disclosed:
  - 18.5.4 pursuant to any law, regulation or the rules of any recognised exchange on which the securities of a party are or are to be listed; or
  - 18.5.5 in connection with proceedings before a court of competent jurisdiction or under any court order or for the purpose of receiving legal advice,
- but only to the extent and for the purpose of that disclosure.
- 18.6 Each party acknowledges that Confidential Information is valuable and that damages might not be an adequate remedy for any breach of this Condition 18 and accordingly a party will be entitled, without proof of special damage, to an injunction and other equitable relief for any actual or threatened breach of this Condition 18.

## **19. ENTIRE CONTRACT**

- 19.1 The entire agreement between the parties for the supply of the Services consists of: (i) these Conditions; (ii) the Confirmation; (iii) any Supplementary Terms; and (iv) any documents referred to in these Conditions.
- 19.2 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any statement, understanding, representation or warranty (whether

negligently or innocently made) that is not expressly set out in the Contract. Nothing in this Contract shall operate to exclude or limit the liability of a party for fraudulent misrepresentation.

- 19.3 Each party acknowledges its only remedy in respect of statements, understandings, representations, misrepresentations or warranties in relation to this Contract shall be for breach of contract and each party agrees that it shall have no additional remedy in respect of such statements, understandings, representations, misrepresentations or warranties upon which it may have relied in entering into this Contract whether for misrepresentation or otherwise.

## **20. GENERAL**

- 20.1 Any member of Trotec's Group of companies may perform any of Trotec's obligations (in whole or in part) or exercise any of its rights (in whole or in part) by itself or through any other member of its Group.
- 20.2 Any additional services provided by Trotec to the Customer or the Customer's ultimate client (excluding, for the avoidance of doubt, any of the Services) may be subject to Supplementary Terms.
- 20.3 Except as provided pursuant to and in accordance with Condition 20.7, the Contract is personal to the Customer and the Customer shall not assign, charge, dispose of, deal with, subcontract or transfer to any other person any of its rights or obligations under the Contract without the prior written consent of Trotec.
- 20.4 Trotec may assign, transfer or sub-contract all or any of its rights and obligations under the Contract to any other person without the consent of the Customer.
- 20.5 No failure or delay by Trotec in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by Trotec of any breach of the Contract by the Customer shall be effective unless in writing signed by a duly authorised officer of Trotec and shall not in any event be considered as a waiver of any subsequent breach of the same or any other provision.
- 20.6 If any provision of these Conditions is held by any competent authority to be illegal, invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 20.7 Except as provided by these Conditions, a person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 (as may be amended, updated or replaced from time to time) 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.
- 20.8 The rights of the Customer under the Contract are the Customer's only rights relating to the subject matter of the Contract, and are to the exclusion of any other legal rights other than the right to claim damages for breach of contract which is not otherwise excluded by the Contract.
- 20.9 The rights and remedies of Trotec provided under the Contract are cumulative and (unless otherwise provided in the terms of the Contract) are not exclusive of any rights or remedies provided by law or in these Conditions.
- 20.10 Except as otherwise provided by these Conditions, the parties will each bear their own costs and expenses incurred in respect of compliance with their obligations under the Contract. Each party shall at the request and cost of the other execute all deeds and other documents, and do all things that the other may require (acting reasonably) in order to give effect to the terms of this Contract.
- 20.11 Any notice to be given by either party to the other under this Contract must be in writing addressed to that other party at its registered office or principal place of business or such other address or electronic mail ("email") address as may have been notified for these purposes.

Notices shall be delivered personally, sent by prepaid recorded, special delivery or first class post (or in the case of overseas post, by airmail) or sent by email.

- 20.12 A notice is deemed to have been received if delivered by hand, at the time of delivery, if sent by prepaid recorded, special delivery or first class post, on the second working day after posting and if sent by prepaid air mail post, on the fifth business day from the date of posting. Any notice sent by email will be effective only when actually received in readable form and service shall be deemed to be effected on the same day on which it is sent.
- 20.13 A notice which is received or deemed to be received on a day which is not a business day or after 5pm on any business day according to local time in the place of receipt shall be deemed to be received at 9am on the next business day according to such local time.
- 20.14 The provisions of this Condition 20 shall not apply in relation to the service of any claim form, application notice, order, judgment or other document relating to or in connection with any proceedings.

## **21. NO PARTNERSHIP, AGENCY OR EMPLOYMENT**

- 21.1 Nothing in this Contract or any arrangement contemplated by it shall constitute either party a partner, agent, fiduciary or employee of the other party.

## **22. GOVERNING LAW AND JURISDICTION**

- 22.1 The Contract and any dispute or claim arising out of it or in connection with it is subject to the laws of England & Wales and the exclusive jurisdiction of its courts.

## **23. DEFINITIONS AND INTERPRETATION**

- 23.1 The following definitions and rules of interpretation apply in these Conditions:

Annual Maintenance	means the annual maintenance of the Machines covered by a TroCare Protect Package and as set out in the TroCare Information Booklet, which may include, but is not limited to, the inspection of individual components, cleaning of the optics, adjustment of the laser beam and table and/or replacement of worn parts.
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 9.00 am to 5.00 pm on any Business Day.
Charges	means the charges payable by the Customer for the supply of the Services in accordance with Condition 4.
Commencement Date	has the meaning given in Condition <a href="#">2.3</a> .
Conditions	means these terms and conditions and any special conditions included in a Confirmation or which may otherwise be agreed in writing between the parties.
Confidential Information	means with respect to the Customer or Trotec (or any of their Affiliates), all information and trade secrets relating to its business or customers which come into the possession of the other party pursuant to the Contract, in any form, as of the Commencement Date.

Consumables	means the non-durable items used in the operation of the Machine.
Contract	means the contract between Trotec and the Customer for the supply of Services in accordance with these Conditions.
Corrective Maintenance Services	means the maintenance services required outside of the Annual Maintenance to restore the Machine to Good Working Order by repairing the Machine or replacing defective parts or components of the Machine (acting in its sole discretion).
Customer	means the person or firm who purchases Services from Trotec specified as the customer in the Order.
Customer Default	has the meaning set out in Condition <a href="#">8.2</a> .
Data Protection Law	means all applicable laws and regulations pertaining to the security, confidentiality, protection or privacy of personal data, as amended or re-enacted from time to time, including (without limitation and to the extent applicable) the GDPR.
Machine(s)	means the New Machine and/or Outdated Machine (as applicable) covered by the applicable TroCare Protect Package and as identified in the Confirmation.
GDPR	means the European General Data Protection Regulation, namely Regulation (EU) 2016/679.
Good Working Order	means operating in accordance with the Specification of the Machine assuming that the Machine is operated in accordance with the instructions in the operating manual as provided by Trotec to the Customer.
Insolvency Event	means each and any of the following in relation to the Customer or Trotec (in each case, the “ <b>Relevant Party</b> ”): any action (corporate or otherwise), legal proceedings or other procedure or step is taken by any person in any jurisdiction in relation to or with a view to: (i) the winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Relevant Party; (ii) the appointment of a liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of the Relevant Party or any of its assets; (iii) the enforcement of any security over any assets of the Relevant Party; or (iv) the attachment, sequestration, distraining upon or execution over or affecting any material asset of the Relevant Party, which in any case is not withdrawn or dismissed as soon as reasonably practicable.
Intellectual Property Rights	means any and all patents, trade marks, business names, copyright, moral rights, database rights, rights in designs, rights in inventions, and any and all other intellectual property rights, whether or not registered or capable of registration and whether subsisting anywhere in the world and including all applications and rights to apply for any of them together with all or any associated goodwill.

Location	means the point of installation of the Machine at the Premises or as detailed in the Confirmation.
Loss	means all loss, damage, claims, cost and expense.
Machines	means any machine, replacement parts and consumables supplied by Trotec to the Customer to which the Services relate as specified in the Confirmation.
New Machine(s)	means goods installed by Trotec or Trotec Personnel within the last 12 Months in accordance with any Supplementary Terms.
Non-conforming Services	means Services which do not comply with Condition 9.1.
Outdated Machines	means the goods installed by Trotec or Trotec Personnel which are more than 10 years old as determined by the date of first installation.
Order	means an order, for the purchase of the Services, submitted by the Customer and accepted by the Supplier in accordance with Condition 2.3.
Premises	means the Customer or another entity's premises, or any other such location agreed between the parties in writing where the Machine is located.
Price	means the price of the Services stated in Trotec's price list (as published or otherwise notified by Trotec to the Customer in relation to the TroCare Protect Package, which may be amended by Trotec from time to time) or as may otherwise be agreed in writing between the Customer and Trotec and any other sums due and payable under the Contract.
Quotation	means a quotation provided by the Supplier to the Customer in relation to the Services and/or Spare Parts and Consumables.
Regulations	means all legislation, and all rules or regulations of any kind, including orders, instructions or directions of a competent authority, and all related official guidance, whether enacted or enforced by any competent authority with whose decision or determination it is industry practice to comply.
Services	means the services as described in applicable TroCare Protect Package and any other services to be performed by Trotec which relate to the devices supplied to the Customer under the Contract and as identified in the Confirmation (which may include the applicable the Annual Maintenance and the Corrective Maintenance Services and any other services agreed between the Customer and Trotec as applicable).
Spare Parts	means the all spare components and subassemblies of the Machine supplied for installation in the Machine as part of the provision of the Services.
Specification	means the specification for the Services as described in the TroCare Information Booklet.

Supplementary Terms	means any additional terms and conditions applicable to the Machine and/or the Services, which are referred to or set out in the Confirmation or which are provided to the Customer by Trotec.
TroCare Information Booklet	means the information book provided by Trotec and as updated from time to time, which includes the description or specification of the Services referred to in the Order or as otherwise identified by Trotec in writing.
TroCare Protect Package	means the maintenance service package set out in the TroCare Information Booklet which may be purchased by the Customer from Trocare and confirmed by Trotec in the Confirmation or as otherwise set out in writing.
Trotec	means Trotec Laser Limited registered in England and Wales with company number 06034809.
Trotec Materials	has the meaning set out in Condition 8.1.4.

23.2 References to: (i) a statutory provision includes a reference to any modification, consolidation or re-enactment or replacement of the provision from time to time in force and all subordinate instruments, orders or regulations made under it; (ii) "includes" or "including" shall be construed without limitation to the generality of the preceding words; (iii) "writing" means a method of reproducing words in a legible and non-transitory form, including e-mail; (iv) "indemnify" means to indemnify on demand and hold harmless on an after tax basis; (v) the singular includes the plural and vice versa; (vi) one gender includes all genders; (vii) any document (including the Contract) shall be construed as a reference to that document as amended from time to time

23.3 Condition headings do not affect their interpretation.