

# SUPPLY AGREEMENT

This **Supply Agreement** (the “**Agreement**”) is made and entered into as of [month] \_\_, 20[ ] (the “**Effective Date**”) by and between Prolec Limited, a limited company organized under the laws of England & Wales with company number: 01689109 (hereinafter referred to as “**Prolec**”), having its principal office at 25 Benson Road, Nuffield Industrial Estate, Poole, BH17, OGB, United Kingdom and [ ] Limited, a limited company organized under the laws of [England & Wales] with company number: [ ] (hereinafter referred to as “**Customer**”), having its principal office at [ ]; each a “**Party**” and together the “**Parties.**”

This Agreement establishes the terms and conditions under which Prolec will supply and the Customer will purchase the Product for the Customer’s resale and distribution with Product to its customers. This Agreement consists of the terms set forth below along with the following attached Exhibits along with any additional documents, schedules, attachments or exhibits incorporated herein by reference:

- Exhibit A: Product and Pricing
- Exhibit B: User Agreement
- Exhibit C: Trade Area
- Exhibit D: Warranty; Warranty Remedy, Support & Procedures

## 1.0 DEFINITIONS

As used in this Agreement, the following words and phrases, and all capitalized terms shall have the meanings indicated:

“**Affiliate(s)**” means any entity that directly or indirectly through one or more entities, controls, is controlled by, or is under common control with a Party. For purposes of this definition, the term “control” as applied to any entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that entity, whether through ownership of voting securities or otherwise.

“**Customer Marks**” means the trademarks, service marks, trade names, logos or other words or symbols or brands identifying or associated with the business of Customer.

“**Commission**” (including such related tenses such as “**Commissioning**” and “**Commissioned**”) means the process of calibrating and testing the Product and the related machine components and parameters to ensure the Product is safe, efficient and meets performance specifications and other requirements set forth in the Documentation.

“**Customer**” means, collectively, the Customer and its Affiliates.

“**Documentation**” means the written descriptions, literature, promotional materials, or other documentation for the Product, as furnished by Prolec and located in the Terms and Conditions section of Prolec’s website at [www.prolec.co.uk](http://www.prolec.co.uk), as amended from time to time.

“**End User**” means any individual or corporate end user of the Product.

“**Intellectual Property Rights**” means all patents, copyrights, moral rights, trademarks, trade secrets and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing.

“**Losses**” means all liabilities, damages, losses, fines, expenses and costs (including all interest, penalties, reasonable legal and professional costs and expenses).

“**Operating Instructions**” means any operating instructions for using the Product located in the Terms and Conditions section of Prolec’s website at [www.prolec.co.uk](http://www.prolec.co.uk), as amended from time to time.

“**Product**” Prolec’s Machine Envelope Controller (MEC) system, being a machine control solution designed to prevent movements that would bring parts of a machine (including the boom, stick, bucket and counterweight of an

excavator) into hazardous or restricted areas through predefined movement limits (including virtual walls), and which may include height limiting and/or slew limiting functionality to restrict unsafe machine movements.

**“Prolec Marks”** means the trademarks, service marks, trade names, logos or other words or symbols or brands identifying or associated with the business of Prolec.

**“Reseller”** means a third-party entity that buys products from a Party for the purpose of reselling such products and providing related support services to end users.

**“Software”** means Prolec’s proprietary software incorporated within the Product.

**“Trade Area”** means the geographic territory described in Exhibit C to this Agreement.

## 2.0 TERM

2.1 **Term.** The term of this Agreement will commence on the Effective Date and shall continue until terminated at any time by either party giving one month’s notice in writing to the other.

## 3.0 APPOINTMENT AND AUTHORITY OF CUSTOMER

3.1 **Appointment and Resale Rights.** Prolec appoints the Customer, and the Customer accepts appointment, as an independent, non-exclusive reseller of the Product within the Trade Area, subject to the terms and conditions of this Agreement. As a reseller of the Product, in addition to its other obligations under this Agreement, the Customer will (i) be responsible for all costs and expenses related to its performance under this Agreement; (ii) provide such assistance and submit such reports regarding Customer’s activities under this Agreement as Prolec may reasonably request; and (iii) not promote, sell or service the Product outside the Trade Area.

3.2 **Software Licenses.** Subject to the terms of this Agreement, including without limitation the payment of all applicable fees, Prolec hereby grants the Customer a perpetual, nonexclusive, nontransferable license to possess, use and reproduce the Software in object code only and for the sole and exclusive purposes of (a) Commissioning the Product and (b) sublicensing and distributing the Product, solely to its resellers and End-Users for use in the Trade Area only in accordance with this Agreement. Prolec reserves all other rights not expressly granted under this Agreement.

3.3 **Reservation of Rights.** Except to the extent provided above, all rights in the Product (inclusive of Prolec Marks) are hereby reserved to Prolec. The rights granted to Customer hereunder are non-exclusive and Prolec specifically reserves the right to market and distribute the Product to or through any other person or business entity in Prolec’s sole discretion. The rights granted to Customer under this Section 3.0 are limited as provided in this Agreement.

## 4.0 PROMOTION

4.1 **Marketing Materials Documentation.** If agreed by the Parties, Prolec will provide Customer with editable electronic versions of all sales and marketing materials, and other such Documentation applicable to the promotion and sales of Product. The Customer may make revisions to the Documentation, solely to the extent agreed by the Parties, and may use such modified Documentation for the promotion and sale of the Product.

## 5.0 CUSTOMER OBLIGATIONS

5.1 **No Representations.** The Customer shall not make any representations, guarantees or warranties of any type with respect to the specifications, features, capabilities or otherwise concerning the Product which are in addition to or inconsistent with those set forth in the Documentation delivered by Prolec to Customer hereunder. In no event shall Customer make any representation, warranty or guarantee by or on behalf of Prolec.

5.2 **User Agreement.** The Customer acknowledges and agrees that:

5.2.1 the Product shall be used strictly in accordance with the Operating Instructions only; and

5.2.2 it will Commission the Product using an installer accredited by Prolec only;

5.2.3 it will not allow use of the Product in a live environment until Prolec has signed off the completion of the applicable Commissioning.

- 5.3 **Flow Down Obligations.** The Customer further undertakes to procure that its customers, resellers and End Users:
- 5.3.1 are aware of the Operating Instructions and accept the terms and conditions of the user agreement set out in Exhibit B as amended by Prolec from time to time (“**User Agreement**”), prior to using the Product; and
  - 5.3.2 use the Product solely in accordance with the User Agreement and the Operating Instructions;
  - 5.3.3 Commission the Product using an installer accredited by Prolec only.

The parties acknowledge that any breach by the Customer of clause 5.2 or 5.3 constitutes a material breach of this agreement which is incapable of remedy.

- 5.4 **Business Practices.** Customer agrees not to engage in any deceptive, misleading, illegal or unethical practices that may be detrimental to Prolec or the Product, or to promote, sell or service Product outside the Trade Area.
- 5.5 **Indemnification.** The Customer will defend, indemnify and hold Prolec harmless from and against any Losses for which Prolec becomes liable arising from or relating to any claim by a third party against Prolec arising out of or in connection with any of the following (each a “**Claim**”): (a) the issuance by Customer of any warranty or representation in connection with the Product not authorized in writing by Prolec; or (b) any gross negligence or willful misconduct of the Customer, its agents, subcontractors or employees; (c) the Customer’s or its Resellers’ or End User’s Commissioning of the Product; (d) the Commissioning of the Product by any third party who is not certified by Prolec; and (e) any End User using the Product contrary to the User Agreement or the Operating Instructions.
- 5.6 **Marketing.** The Customer shall actively promote and market the Product and shall use reasonable commercial efforts to participate in the activities set forth in any joint marketing guidelines agreed between the Parties. Upon request, Customer shall submit a market development plan to Prolec in the form provided by Prolec and consult with Prolec on a regular basis with respect to its marketing efforts. The Customer shall independently determine the pricing at which it offers the Product and any related services to its customers.
- 5.7 **Prolec Marks.** The Customer acknowledges that all Prolec Marks are vested in Prolec absolutely. Prolec grants to the Customer a non-exclusive, non-transferable, fully revocable, limited license to use the Prolec Marks during the Term solely in connection with the marketing and promotion of the Product under this Agreement and the exercise of the Customer’s rights under this Agreement. All goodwill associated with the Prolec Marks will accrue and inure to the sole benefit of Prolec. Customer will comply with Prolec’s current trademark usage guidelines at all times as notified in writing to the Customer and will only use the Prolec Marks in a manner which preserves the rights of Prolec. Customer has no right, title or interest in the Prolec Marks aside from the license granted in this Section. Upon termination or expiration of this Agreement, or notice from Prolec, the license to the Prolec Marks will automatically expire and Customer will immediately cease using the Prolec Marks. Prolec will have the right and full discretion to: (a) upon reasonable notice, inspect any and all uses of the Prolec Marks by Customer, including all advertising and promotional materials; and (b) require any changes or improvements that Prolec deems reasonably necessary so that Prolec’s reputation or the goodwill associated with the Prolec Marks are not diminished, and Customer will promptly implement such changes. Upon request, Customer will provide Prolec with representative materials (including copies of marketing collateral and materials) showing Customer’s use of the Prolec Marks in connection with the Product and activities under this Agreement for Prolec’s approval.

## 6.0 RELATIONSHIP MANAGEMENT

- 6.1 **Management Reviews.** Each Party will designate and maintain business and technical contacts for purposes of facilitating and coordinating communications and decisions relating to this Agreement. Either Party may change its contacts at any time by informing the other Party in writing (email will suffice).

## 7.0 ORDERING PROCEDURES

- 7.1 **Purchase Orders.** During the Term, Customer will submit to Prolec firm written purchase orders for the Product. Purchase orders will be placed with Prolec by the method mutually agreed to by the Parties (e.g., electronic mail, electronic data interchange (EDI)). Purchase orders shall include the following information (collectively, the

**“Basic Order Terms”:** (i) specific reference to this Agreement or applicable Prolec quotation number, (ii) Products and quantities, (iii) prices, (iv) requested delivery date.

- 7.2 **Purchase Order Acceptance.** Purchase orders are accepted as valid and binding only when confirmed by Prolec in writing. For purchase orders that are rejected Prolec will notify Customer of the reasons of rejection. Prolec will not be obligated to accept any purchase order and will have no liability for any purchase orders that are not accepted by it in writing. All Basic Order Terms are established upon Prolec’s acceptance of the purchase order.
- 7.3 **Precedence.** This Agreement will take precedence over and govern in the case of any additional, different or conflicting terms and conditions in any purchase orders or other sales documentation of either Party. Purchase orders and other sales documentation of either Party may not vary the terms of this Agreement, and Prolec hereby expressly rejects any and all different, conflicting, or additional terms appearing on any order or any other document from Customer, and such terms will have no force or effect, either through acceptance of such order by Prolec in writing or by performance.
- 7.4 **Change Orders and Cancellations.** In the event that Customer requests modifications to a purchase order prior to delivery, Prolec will use commercially reasonable efforts to honor the request. Customer requests for modifications to a purchase order may be granted or denied in Prolec’s sole discretion, and Prolec may claim reasonable compensation (up to the full amount of the order) for expenses (including labor, parts and materials costs) actually incurred in connection therewith. Customer may not request modifications to a purchase order following delivery.
- 7.5 **Forecasts.** On or before the third (3<sup>rd</sup>) business day of each month, Customer will submit to Prolec, a written rolling demand forecast covering Customer’s expected requirements for Product for the following 12 months. Each forecast will be considered a non-binding estimate of Customer’s prospective purchases of Product to be used for Prolec’s information and planning purposes only.
- 7.6 **Access to Prolec Websites.** Prolec may provide Customer with access to certain of Prolec’s password-protected websites that Customer may use to order Products, and which also may contain non-public, confidential information about the Products that is considered Confidential Information as that term is defined in Section 15 below. Customer agrees that it will not disseminate any Confidential Information obtained from Prolec’s password-protected websites in violation of this Agreement. Customer further agrees that it will not disseminate or distribute Customer’s passwords for the websites to any third party.

## 8.0 DELIVERY

- 8.1 **Delivery Time.** Estimated delivery dates for the Product are established when a purchase order is received and accepted by Prolec. Prolec will use commercially reasonable efforts to meet Customer’s requested delivery dates, unless Customer is in default under the Agreement or Prolec’s performance is otherwise excused pursuant to the express provisions of this Agreement (e.g., *force majeure*). Delivery will occur EXW, Prolec premises in Poole, UK (Incoterms® 2020 Rules).
- 8.2 **Delivery of Software.** Unless otherwise specified in the applicable purchase order, Software will be delivered as part of the Product.

## 9.0 ACCEPTANCE; INSPECTION

Customer may reject the Product by giving prompt written notice of identified damage to the Product and must notify Prolec within 10 days of receipt of any such item of Product. If Customer retains the Product without giving notice within the designated notice period, Customer will be deemed to have waived its right to reject the Products. This clause, however, will not prejudice Customer’s warranty remedies under Exhibit D of this Agreement.

## 10.0 PRICING AND PAYMENT

- 10.1 **Prices.** Prices for Products are as set forth in Exhibit A. Prolec may at any time increase its Product prices upon written notice to Customer.
- 10.2 **Time of Payment.** Payment terms are set out in Exhibit A. .
- 10.3 **Additional Payment Terms.** Customer shall make payment in the currency indicated on the accepted purchase order by wire transfer of immediately available funds to an account specified by Prolec. In addition to any other

remedy available to Prolec, any late payments will be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less. Prolec is entitled to offset payments against prior debt balances in the Customer's account. Should any indebtedness owed by Customer to Prolec be past due, Prolec may, at its option and without prejudice to its other remedies, withhold further shipments or deliveries to Customer until all indebtedness to Prolec has been fully paid. Prolec's right to suspend deliveries shall not apply where the Customer has raised a good faith dispute in respect of any invoice and has paid any undisputed element of such invoice(s).

- 10.4 **Taxes.** Prices for Product do not include any applicable sales taxes, Value Added Tax, export or import charges, transportation or insurance charges, tariffs, customs and duty fees, personal property or similar taxes; all of which shall be paid by Customer. Any tax that Prolec may be required to collect or pay upon the sale or delivery of the Product shall be paid by Customer to Prolec unless Customer provides direct payment authority or an exemption certificate valid in the state and/or country to which the Product will be shipped.

#### 11.0 PRODUCT CHANGE

Prolec reserves the right to alter the design, functionality or construction of any Product. This right notwithstanding, during the Term Prolec will provide commercially reasonable notice to Customer of any changes made to the Product that would materially affect their functionality or serviceability ("Product Change Notice").

#### 12.0 LIMITED WARRANTY

Warranty terms for the Product are as set forth in Exhibit D. The Warranty Period will be two (2) years from acceptance of the Product.

#### 13.0 OWNERSHIP

13.1 **General.** As between the Parties: Prolec owns all right, title and interest in and to the Product, Prolec Marks, Documentation, any modifications to the Product, any technology, software, designs, engineering details, schematics and similar data relating to or incorporated in the Product, and any and all Intellectual Property Rights embodied therein or related thereto. Each Party reserves all rights in its products, Marks and documentation not expressly granted in this Agreement, and no licenses are granted by such Party to the other Party under this Agreement, whether by implication, estoppel or otherwise, except as expressly set forth herein.

13.2 **Restrictions.** Except as expressly authorized by this Agreement, neither party may: (i) modify, copy, alter, translate or create derivative works of any of the products or the documentation owned by the other party; (ii) license, sublicense, resell, distribute, lease, rent, lend, transfer, assign or otherwise dispose of any of the products or the documentation owned by the other party; (iii) disassemble, decompile or reverse engineer any of such products, Software or documentation; or (iv) cause or permit any other Party to do any of the foregoing. In addition, neither party will unless otherwise authorized under this Agreement, remove, alter or obscure any proprietary notices in any of the products or the documentation owned by the other party including copyright notices, or permit any other party to do so, except as otherwise permitted under this Agreement or by the other party writing. If any of the foregoing restrictions are not enforceable due to applicable law, then, to the extent allowed under applicable law, before engaging in the activity that would have otherwise been prohibited by such restrictions, each party will provide the other party advanced written notice of its intent to engage in such activity.

#### 14.0 INTELLECTUAL PROPERTY INDEMNIFICATION

15.1 **Indemnification by Prolec.** Prolec will defend, indemnify and hold harmless Customer from and against any claim of infringement of a patent, copyright, trademark or other intellectual property or proprietary right available pursuant to the laws in the Trade Area asserted against Customer by a third party based upon Customer's use or distribution of the Product in accordance with the terms of this Agreement. If Customer's use or distribution of any of the Product is, or in Prolec's opinion are likely to be, enjoined due to the type of infringement specified above, or if required by settlement, Prolec may, in its sole discretion: (i) substitute for the Product substantially functionally similar products, programs and documentation; (ii) procure for Customer the right to continue using or distributing the Product ; or if (i) and (ii) are commercially impracticable, (iii) terminate the Agreement and refund to Customer the price paid by Customer as reduced to reflect a five year straight-line

depreciation from the applicable purchase date. The foregoing indemnification obligation of Prolec will not apply to the extent that any claim arises from: (a) the combination or utilization of the Product with hardware or software products, services, information, data, systems, interfacing or devices not made, or supplied by Prolec; (b) the operation of the Product in a manner not specified by the Operating Instructions or other Documentation, as applicable; (c) the unauthorized modification or use of the Product; (d) the use of other than a current unaltered release of the Product available from Prolec; (e) use of the Product which has been Commissioned by anyone other than a Prolec accredited installer. THIS SECTION 15.1 STATES PROLEC'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD-PARTY RIGHTS, INCLUDING BUT NOT LIMITED TO PATENTS, COPYRIGHTS, TRADEMARKS OR TRADE SECRET RIGHTS.

15.2 **Indemnification Process.** A Party's indemnification obligations pursuant to any indemnity in this Agreement are contingent upon receipt of: (i) prompt notice of any third party claim by the indemnified party (but in any event notice in sufficient time for the indemnifying Party to respond without prejudice); (ii) the exclusive right of the indemnifying party to control and direct the investigation, defense, and settlement (if applicable) of such claim (so long as any such settlement does not involve an admission of liability on wrongdoing on the part of the indemnified Party); and (iii) all reasonable necessary cooperation of the indemnified Party. The indemnified Party will have the right to participate in the defense action at its own expense.

15.3 **Other terms applying to indemnities.** Notwithstanding any other provision of this Agreement each indemnified party shall use reasonable endeavours to mitigate any Loss it may suffer or incur as a result of an event that may give rise to a claim under an indemnity or for any contractual remedy set out in this agreement.

## 15.0 CONFIDENTIALITY

15.1 **Confidential Information.** The Parties acknowledge that by reason of their relationship each may have access to certain Confidential Information of the other Party. "**Confidential Information**" means all information disclosed by one Party, its Affiliates, or the agents of any of the foregoing (collectively, the "**Disclosing Party**") to the other Party, its Affiliates or the agents of any of the foregoing (collectively, the "**Receiving Party**") that is (i) in tangible form and which is marked or otherwise designated as "Confidential" or "Proprietary," (ii) disclosed orally, and summarized in a writing delivered to the other Party within thirty 30 days of disclosure, or (iii) which by its nature under the circumstances of disclosure, would be deemed confidential or proprietary by a reasonable business person. Confidential Information includes, without limitation (a) non-public information relating to the Disclosing Party's technology, customers, vendors, business plans, introduced and non-introduced products, promotional and marketing activities, finances and other business affairs, (b) third-party information that the Disclosing Party is obligated to keep confidential, and (c) the terms of this Agreement and any discussions or negotiations between the Parties. All Confidential Information will remain the exclusive property of the Disclosing Party. For clarity, all information in connection with the Product shall be Prolec's confidential information.

15.2 **Use and Protection of Confidential Information.** As a Receiving Party, each Party agrees

- (i) to use the Disclosing Party's Confidential Information solely for the purposes and transactions set forth in this Agreement;
- (ii) to use the same standard of care to protect the Confidential Information as it uses to protect its own similar information but in no event less than reasonable and prudent care;
- (iii) to hold the Information in confidence and, except as otherwise expressly provided herein, not to disclose the same to any third party without the prior written authorization of the Disclosing Party;
- (iv) to restrict circulation and disclosure of the Confidential Information to its employees and contractors (collectively "**Personnel**") who (a) have a need to know the Confidential Information in connection with the Parties' business relationship, and (b) have executed written nondisclosure Agreements obligating them to protect the Confidential Information; and
- (v) at the Disclosing Party's option and request, to promptly return or destroy the Disclosing Party's Confidential Information, including materials prepared in whole or in part based on such Confidential Information, and all copies thereof in whatever medium, and certify to the Disclosing Party that the Receiving Party no longer has in its possession or under its control any such Confidential Information

- 15.3 **Exclusions.** The Disclosing Party acknowledges that the Receiving Party shall not be liable for wrongful disclosure or use of Confidential Information which: (i) is already known to the Receiving Party at the time of disclosure; (ii) becomes publicly known through no wrongful act of the Receiving Party; (iii) is received from another source without restriction on disclosure or use; (iv) is independently developed by the Receiving Party without the use of or reference to the Confidential Information; (v) is communicated to a third party with the express prior written consent of the Disclosing Party; or (vi) is lawfully required to be disclosed to any governmental agency or is otherwise required to be disclosed by law, provided that before making such disclosure the Receiving Party uses reasonable efforts to give the Disclosing Party an opportunity to object or to assure confidential treatment of the Information.
- 15.4 **Duration of Obligation of Confidence.** The foregoing obligations of confidence are intended to apply to Confidential Information received by the Receiving Party both prior to the Effective Date and during the Term of this Agreement. The Parties agree that the Receiving Party's obligations with respect to the Confidential Information will survive for a period of three (3) years following termination of this Agreement; except that obligations of confidence with regard to trade secrets and any technical information disclosed hereunder by a Disclosing Party will be treated as Confidential Information indefinitely until it becomes part of the public domain through no fault or omission of the Receiving Party.
- 15.5 **Return of Confidential Information.** The Receiving Party will return or destroy all tangible materials embodying the Disclosing Party's Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information) promptly following the Disclosing Party's written request. At the Disclosing Party's option, the Receiving Party will provide written certification of its compliance with this Article 15.
- 15.6 **Equitable Relief.** The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and that therefore upon any such disclosure by the Receiving Party the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law, without proof of damages.
- 15.7 **Feedback.** Each Party may from time to time provide suggestions, comments or other feedback ("**Feedback**") to the other Party with respect to Confidential Information provided by such other Party and/or the other Party's products or services. Both Parties agree that all Feedback is and will be given entirely voluntarily. Neither Party shall provide any Feedback that is subject to license terms that seek to require any of the other Party's products, technology, service or documentation incorporating or derived from such Feedback, or any of the other Party's intellectual property to be licensed or otherwise shared with any third party. Furthermore, except as otherwise provided herein or in a separate subsequent written agreement between the Parties, the receiver of Feedback will be free to use, disclose, reproduce, license or otherwise distribute, and exploit the Feedback provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

## 16.0 LIMITATION OF LIABILITY

- 16.1 EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER (INCLUDING ITS AFFILIATES) FOR DIRECT DAMAGES OF ANY KIND ARISING IN CONNECTION WITH THIS AGREEMENT (REGARDLESS OF THE CAUSE OF ACTION ASSERTED WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE) WILL NOT EXCEED £5 MILLION. NEITHER PARTY WILL BE LIABLE TO OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND OR FOR ANY LOST PROFITS, REVENUE OR THE COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE, EVEN IF THE AFFECTED PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 16.2 The preceding limitations and exclusions of liability do not apply to:
- 16.2.1 liability for breach of a party's obligations arising under Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
  - 16.2.2 liability for personal injury or death or property damage caused by its negligence;

- 16.2.3 liability for any matter for which it would be illegal to exclude or limit or to attempt to exclude or limit its liability;
- 16.2.4 liability for fraud or fraudulent misrepresentation;
- 16.2.5 the Customer's liability under this agreement to pay for the Products and interest; or
- 16.2.6 any liability arising from breach by the Customer of clause 5.2.2 or 5.3.3 or from the indemnity given by the Customer at 5.5 (e) (Use of Product contrary to the Operating Instructions).

16.3 The Parties agree that each party has entered into this Agreement in reliance upon the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the Parties and that the same form an essential basis of the bargain between the Parties.

## 17.0 INSURANCE.

17.1 Each party shall carry the following minimum types and amounts of insurance on an occurrence basis, or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis, with a three (3) year tail following the termination or expiration of the Agreement:

- 17.1.1 Product liability insurance with limits no less than Five Million GBP (£5,000,000) per occurrence and in the aggregate.
- 17.1.2 Professional indemnity insurance with limits of no less than One Million GBP (£1,000,000) per claim.

17.2 The policies referred to in Section 17.1 shall contain an indemnity to principals clause.

17.3 Each Party shall provide the other with copies of the certificates of insurance, policy endorsements or other documentation as may be required to confirm all insurance coverage required by this Section 17, and shall not do anything to invalidate such insurance. This Section 17 shall not be construed in any manner as waiving, restricting, or limiting the liability of either Party for any obligations imposed under this Agreement (including but not limited to, any provisions requiring a Party to indemnify, defend, and hold the other harmless under this Agreement).

## 18.0 TERMINATION

- 18.1 **Termination for Cause.** Either Party may terminate this Agreement if the other Party breaches one or more material obligation(s) under this Agreement and fails to cure such breach(es) within 30 days of the date of the non-breaching Party's written notice of the breach to the breaching Party.
- 18.2 **Termination for Insolvency.** Either Party may terminate this Agreement and cancel any outstanding purchase orders upon written notice in the event that the other Party ceases business operations or enters into any bankruptcy, insolvency, receivership or like proceeding not dismissed within 30 days, or assigns its assets for the benefit of creditors.
- 18.3 **Continued Fulfillment of Orders.** Upon termination of this Agreement, Prolec will continue to fulfill all purchase orders accepted by Prolec prior to the date of termination, unless Customer is in default or unless Prolec's performance is excused or delayed by law, or by the terms of this or any other written agreement between the Parties.
- 18.4 **Survival.** Neither the expiration nor termination of this Agreement will relieve any Party of any obligation previously accrued hereunder. The provisions of this Agreement concerning warranty, indemnity, confidentiality, intellectual property ownership, limitation of liability, the General Provisions of Section 19.0, and any other provisions that by their terms so provide, will survive such expiration or termination. In addition, any licenses in the Software granted to End Users prior to termination of this Agreement will survive.

## 19.0 GENERAL PROVISIONS

- 19.1 **Assignment; Binding Effect.** Any transfer, assignment or delegation of Customer's rights or obligations under this Agreement will be void without the prior written consent of Prolec (which will not be unreasonably withheld). This Agreement will be binding upon and inure to the benefit of the Parties and their successors and permitted assigns.
- 19.2 **Force Majeure.** Neither Party will be liable to the other for failure to perform its obligations hereunder (except the payment of sums due by one Party to another under this Agreement) to the extent caused by an event beyond the reasonable control of such Party, including, without limitation, natural disaster, government regulations or orders, refusal of approval or a license by a government agency, outbreak of a state of emergency, war, warlike hostilities, civil commotion, riots, epidemics, fire, strikes, lockouts, failure or diminishment of power or of telecommunications or data networks or services.
- 19.3 **Independent Contractors.** Prolec and Customer are independent contractors. Neither Party is an employee, agent, partner or joint venturer of the other. Neither Party will voluntarily or involuntarily bind or attempt to bind the other to any contract or to the performance of any obligation. Neither Party may represent to third parties that it has any right to enter into any obligation on the other's behalf.
- 19.4 **Costs & Expenses.** Each Party will be responsible for all costs and expenses related to its performance under this Agreement unless otherwise expressly provided herein or mutually agreed to by the Parties in another writing making reference to this Agreement.
- 19.5 **Headings and Construction.** Captions and paragraph headings contained in this agreement are for purposes of convenient reference only and may not be used to construe or modify the terms written in the text of this Agreement. Unless expressly indicated to the contrary, the term "including" (and variations thereof) means "including, without limitation."
- 19.6 **Waiver.** Either Party's (i) waiver of any performance by the other Party, (ii) waiver of any condition of this Agreement, or (iii) consent to any breach of this Agreement by the other Party shall (a) be effective only if expressly set forth in a writing signed by the Party alleged to have waived or consented, and (b) not constitute or require an ongoing waiver of such performance or condition, or consent to any previous, different or subsequent breach, regardless of whether such performance, condition or breach is similar, identical or related, and regardless of the course of dealing which develops or has developed between the Parties.
- 19.7 **Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable to any extent, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in effect. The Parties shall attempt in good faith to replace any such invalid or unenforceable provision with a valid and enforceable provision designed to achieve the same purpose and intent to the extent possible under applicable law.
- 19.8 **Publicity.** Neither Party may use the other Party's name in advertisements or otherwise publicly disclose the existence or content of this Agreement without the other's prior written consent or as otherwise provided in this Agreement; except that Prolec may disclose Customer as a customer of Prolec (including use of Customer's name and logo in customer lists on Prolec's website and marketing materials).
- 19.9 **Governing Law; Jurisdiction and Venue.** This Agreement and any disputes arising out of or in connection with the Agreement ("Disputes") will be governed by and construed in accordance with the Laws of England and Wales, without reference to conflict of laws provisions or principles or the United Nations Convention on Contracts for the International Sale of Goods. All such Disputes will be brought exclusively in the courts of England and Wales. Notwithstanding the foregoing, each Party may, at its sole discretion, seek injunctive relief in any court of competent jurisdiction (including, but not limited to, preliminary injunctive relief) to enforce its respective rights.

**19.10 No Third-Party Beneficiaries.** This Agreement does not confer any rights or remedies upon any third party except to the extent expressly set forth in this Agreement.

**19.11 Export / Compliance with Law.** Customer is responsible for complying with all applicable export and import regulations and obtaining all necessary export and import licenses or permits for the direct or indirect export or import of any Product.

Customer will comply with all applicable local laws of the jurisdictions in which Customer conducts its business and to the extent that they may govern Customer's use of the Product and Confidential Information and performance of its other activities under this Agreement.

Customer's obligations under this Section 19.11 will survive the termination of this Agreement for any reason whatsoever. Customer will defend, indemnify and hold Prolec harmless against any liability (including attorneys' fees) arising out of Customer's failure to comply with the terms of this section. Customer's failure to comply with any term of this section shall constitute a material breach of this Agreement and entitle Prolec to immediately terminate this Agreement in addition to any other remedy available at law or equity.

**19.12 Entire Agreement; Modification.** This Agreement, including all Exhibits, schedules, documents and attachments referenced herein, is the entire agreement of the Parties and supersedes all prior or contemporaneous agreements and negotiations relating to the subject matter of this Agreement, specifically the sale of the Products. All amendments to this Agreement must be set forth in writing and signed by the authorized representatives of the Parties.

**19.13 Notices.** Any notice which may be or is required to be given under this Agreement shall be in writing, and will be deemed to have been received a) when delivered personally, b) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or c) one (1) day after having been sent by a commercial overnight carrier with written verification of receipt (d) if sent by email, at the time of transmission. Either Party may change its notice address by written notice to the other.

All notices hereunder shall be addressed as follows (or as subsequently noticed to the other Party):

**Prolec:**

Nigel Shaw  
Email: [nshaw@prolec.co.uk](mailto:nshaw@prolec.co.uk)

**Customer:**

[Name]  
[Email]

**19.14 Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be considered an original and all of which will constitute one single agreement between the Parties. Email and other electronic means of signatures on this Agreement will be binding.

IN WITNESS WHEREOF, the Parties hereto have caused this Supply Agreement to be executed by their respective authorized representatives.

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**[CUSTOMER  
NAME]:**

**PROLEC LIMITED:**

Signature:

Signature:

Print Name:

Print Name:

Title:

Title:

Date:

Date:

**EXHIBIT A  
PRODUCT, PRICES AND PAYMENT**

**[Insert details of Products and prices]**

Prolec will invoice Customer for upon delivery of Products pursuant to clause 8.1. Customer shall pay Prolec the invoice amount within **[30]** days of the invoice date. Failure to make any such payment when due will constitute a material breach of this Agreement.

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**EXHIBIT B  
USER AGREEMENT**

The User Agreement in respect of the Product located in the Terms and Conditions section of Prolec's website at [www.prolec.co.uk](http://www.prolec.co.uk), as amended from time to time

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**EXHIBIT C  
TRADE AREA**

The Customer is authorized to market and distribute Products in the following geographical area(s):

- United Kingdom only

**EXHIBIT D**  
**WARRANTY; WARRANTY REMEDY, SUPPORT & PROCEDURES**

**A. Warranty**

1. Limited Warranty. Prolec warrants to the Customer that Prolec is transferring good title to Product sold pursuant to this Agreement free and clear of any liens or other encumbrances. Prolec further warrants, subject to the terms and conditions of this Exhibit D, that the Products furnished under this Agreement are designed and manufactured to conform to Prolec's specifications (such specifications being located in the Terms and Conditions section of Prolec's website at [www.prolec.co.uk](http://www.prolec.co.uk), as amended from time to time) and will be free from material defects in material and workmanship for a period of 24 months from date of delivery by Prolec. Prolec will provide Customer with warranty support for the Product in accordance with the provisions and procedures set forth in this Exhibit D. Such warranty support is Customer's (and its customers) only and exclusive remedy and Prolec's sole liability for non-conforming items of Product.
2. Warranty Exclusions. The foregoing limited warranty will only apply in the event and to the extent that (a) the Product is properly and correctly installed, configured and interfaced by Prolec accredited installers and maintained, stored, and operated in accordance with the Operating Instructions, and; (b) the Product is not modified or misused. The Product's limited warranty will not apply to, and Prolec will not be responsible for defects or performance problems resulting from (i) the combination or utilization of the Product with hardware or software products, information, data, systems, interfaces or devices not made, supplied or specified in this Agreement other than as part of the Prolec Solution; (ii) the operation of the Product under any specification other than, or in addition to, Prolec's standard specifications for the Product; (iii) the unauthorized or incorrect installation, modification, repair or use of the Product by Customer or any third party; (iv) damage caused by: accident, lightning or other electrical discharge, fresh or salt water immersion or spray, or exposure to environmental conditions for which the Product is not intended; (v) normal wear and tear on consumable parts (e.g., batteries) or (vi) use contrary to the Operating Instructions; (vi) cosmetic damage. Prolec does not warrant or guarantee the results obtained through the use of any Product, or that any Software will operate error-free.
3. Non-Prolec Manufactured Products. Prolec will extend to Customer the manufacturer's warranty, if any, for all equipment and/or software products manufactured by another manufacturer and furnished by Prolec to Customer under such other manufacturer's brands. Customer acknowledges and agrees that Prolec shall not be responsible for separately warranting or supporting the equipment or software products of such other manufacturers.
4. Warranty Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THE PRODUCTS AND DOCUMENTATION, IF ANY, ARE PROVIDED "AS-IS" WITHOUT EXPRESS, IMPLIED OR STATUTORY WARRANTY OF ANY KIND (BY EITHER PROLEC OR ANYONE WHO HAS BEEN INVOLVED IN ITS CREATION, PRODUCTION, INSTALLATION, OR DISTRIBUTION), INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OR TRADE.  
  
CUSTOMER ACKNOWLEDGES AND AGREES THAT PROLEC IS NOT RESPONSIBLE FOR THE OPERATION OF OR FAILURE OF OPERATION OF ANY GLOBAL NAVIGATION SATELLITE SYSTEM, WIRELESS CARRIER NETWORK, OR THE AVAILABILITY OF SATELLITE OR WIRELESS SIGNALS; NOR IS PROLEC RESPONSIBLE FOR PRODUCT DEFECTS OR PERFORMANCE PROBLEMS OR ANY RESULTING DAMAGES OR LIABILITY AS A CONSEQUENCE OF CUSTOMER'S OWN (OR ITS EMPLOYEES', CONTRACTORS', AGENTS', OR CUSTOMERS') INSTALLATION OF THE PRODUCTS.

**B. Warranty Remedy, Support & Procedures**

1. Warranty Remedy. If the Product fails during the applicable warranty period for reasons covered by the limited warranty provided in Article A of this Exhibit D, and Customer notifies Prolec of the failure during the warranty period, Prolec will at its option repair or replace the nonconforming item of Product with a new item or, if the foregoing is commercially impractical in Prolec's determination, refund the purchase price paid by Customer (excluding separate costs of installation, if any) upon Customer's return of the Product in accordance with Prolec's product return procedures then in effect. The foregoing shall constitute Customer's sole and exclusive remedy for any breach of the Warranty specified herein.

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2. Software Fixes. Prolec's warranty support will include Fixes to Software that Prolec releases and makes commercially available and for which it does not charge separately. Prolec may, at its option, forward the Software Fix to the applicable Prolec-Authorized Service Contact for distribution to Customer. Minor Updates, Major Upgrades, new products, or substantially new software releases, as identified by Prolec, are expressly excluded from this update process and limited warranty. Receipt of Software Fixes or other enhancements will not serve to extend the limited warranty period. For purposes of this warranty, the following definitions apply: (1) "**Fix(es)**" means an error correction or other update created to fix a previous Software version that does not substantially conform to its Prolec specifications; (2) "**Minor Update**" occurs when enhancements are made to current features in a Software program; and (3) "**Major Upgrade**" occurs when significant new features are added to Software, or when a new product containing new features replaces the further development of a current product line. Prolec reserves the right to determine, in its sole discretion, what constitutes a Fix, Minor Update, or Major Upgrade.
3. Warranty Support; Primary Service Contacts. Prolec may, in its sole discretion, arrange for fulfillment of its warranty support obligations through an Affiliate, or a Prolec authorized distributor or Prolec authorized service center (a "**Prolec-Authorized Service Provider**").
4. Customer Designated Technical Support Contacts. To enable efficient and consistent delivery of warranty support services, Customer shall identify and designate to Prolec in writing one or more technical support contact(s) to serve as Customer's principal contact(s) for managing Customer's Product warranty support requests and coordinating receipt of Product warranty support services (the "**Customer Technical Support Contact(s)**"). The actual number of Customer Technical Support Contacts will be as mutually and reasonably agreed by the Parties.
5. Warranty Repair Claim Information. If making a warranty repair claim under this Agreement, Customer shall provide the following, and such additional information as may be reasonably requested:
  - a description of the nonconforming item of Product, including as applicable model and serial number
  - date of purchase
  - an explanation of the problem
  - the Customer Technical Support Contact's contact information
6. Warranty Repair & RMA Procedure. Customer shall obtain a Prolec return authorization prior to return of any Product. Product requiring return for warranty repair shall be returned, transport prepaid by Customer, to the Prolec-designated facility in accordance with Prolec's product return procedures then in effect. The status of any product returned later than 10 days after approval by Prolec will be subject to review. Prolec reserves the right to withhold warranty repair services if the date of purchase of the Product cannot be proven or if a claim is made outside the warranty period. Any claims for shipment damage (evident or concealed) must be filed with the carrier by Customer directly.
7. Warranty Determination of Returned Products. Following Prolec's or its authorized representative's examination, warranty or out-of-warranty status will be determined. If upon examination a warranted defect exists, then the Product will be repaired at no charge and shipped, prepaid, back to Customer. Where Prolec elects to replace a Product, repair parts and replacement Products will be provided on an exchange basis and will be new. All replaced parts and Products become the property of Prolec. If Customer desires an air freight return, the Product(s) will be shipped collect. Any repaired or replaced Product will be warranted for a period of 30 days or the remainder of the original warranty period, whichever is longer.
8. Non-responsibility for Lost Data. Neither Prolec nor any Prolec-Authorized Service Provider shall be responsible for any modification or damage to, or loss of any programs, data, or other information stored on any media or any part of any Product serviced hereunder, or for the consequence of such damage or loss, (e.g., business loss in the event of system, program or data failure). It is Customer's responsibility, prior to servicing, to backup data and remove all features, parts, alterations, and attachments not covered by warranty prior to releasing the Product to Prolec or the Prolec-Authorized Service Provider.
9. Escalation to Prolec. In the event that a Prolec-Authorized Service Provider is unable to resolve a Product performance problem or provide a warranty support solution within a reasonable time, Customer may escalate its support service request to Prolec directly.
10. Non-Warranty Support Services. All other (non-warranty) technical assistance, training, installation and support services furnished by Prolec, if any, will be provided on a time, travel and materials basis at prices quoted by

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Prolec. Such services may likewise be provided to Customer by the Prolec-Authorized Service Contact designated by Prolec.