

This agreement is dated [DATE]

#### Parties

MICROMETRIC LIMITED incorporated and registered in England and Wales with company number 03667443 whose registered office is at Doddington Road, Lincoln, LN6 3RX (**Main Contractor**)

[FULL NAME OF SUPPLIER or SUBCONTRACTOR] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Subcontractor**)

#### BACKGROUND

The Main Contractor has entered into an agreement (the Main Contract, as defined in clause 1.1) under which the Main Contractor agrees to supply goods to a Customer.

The Main Contractor has entered into the Main Contract on the basis that it will be the Subcontractor that supplies some of the goods specified in the Main Contract Work (as defined in clause 1.1)], on a "back-to-back" basis with the Main Contractor, and in accordance with the provisions set out below.

#### Agreed terms

##### 1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

###### 1.1 Definitions:

**day:** a period of 24 consecutive hours

**Main Contract:** the agreement attached as Schedule 0.

**Mandatory policies:** the Main Contractor's mandatory policies and procedures and statements listed in the Main Contractors Code of Conduct at Schedule 0, as amended by notification to the Subcontractor from time to time.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
  - 1.3 Except as provided expressly, terms as defined in the Main Contract shall have the same meaning when used in this agreement.
  - 1.4 Except as provided expressly in this agreement, the rules of interpretation in the Main Contract shall apply to this agreement.
  - 1.5 For the purposes of this agreement, and unless the context otherwise requires, references in the Main Contract to "this agreement" shall be to the Main Contract as incorporated into this agreement, with the alterations made for the purposes of this agreement.
  - 1.6 In this agreement:
  - 1.7 any reference to a "clause" or "Schedule" is, unless the context otherwise requires, a reference to a clause or Schedule in this agreement, excluding a clause or schedule in the Main Contract; and
  - 1.8 any reference to a "Main Contract clause" or "Main Contract Schedule" is, unless the context otherwise requires, a reference to a clause or schedule in the Main Contract.
  - 1.9 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
  - 1.10 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
  - 1.11 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
  - 1.12 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
  - 1.13 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
  - 1.14 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
  - 1.15 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time
  - 1.16 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
  - 1.17 A reference to **writing** or **written** includes fax and email
  - 1.18 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
  - 1.19 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- ##### 2. Effective Date
- 2.1 Subject to clauses 2.2 to clause 2.3 below, this agreement shall have legal effect from the date on which it is signed on behalf of both parties (**Effective Date**).
  - 2.2 If the Main Contract has not been signed by the Effective Date, clause 3, clause 4, and clause 5 of this agreement shall have legal effect only from the date on which Subcontractor receives written notice from the Main Contractor that the Main Contract has become legally effective.
  - 2.3 The Main Contractor shall promptly notify the Subcontractor in writing as soon as the Main Contract becomes legally effective.

**3. Back-to-back agreement**

- 3.1 As soon as this clause becomes effective under clause 2 above, the Subcontractor shall discharge in full all the duties imposed upon the Main Contractor in the Main Contract and the Subcontractor shall have in full all the rights, privileges, options and protections that the Main Contractor has in the Main Contract except as further provided in this agreement.
- 3.2 Except as further provided in this agreement, the Main Contract shall be used to determine the respective rights and duties of the Main Contractor and the Subcontractor under this agreement except that:
- (i) wherever in the Main Contract there is a reference to the Customer or a term referring to the Customer, for the purposes of this agreement a reference to the Main Contractor or a term referring to the Main Contractor shall be substituted;
  - (ii) wherever in the Main Contract there is a reference to the Main Contractor or a term referring to the Main Contractor, for the purposes of this agreement a reference to the Subcontractor or a term referring to the Subcontractor shall be substituted; and

**4. Indemnity from Subcontractor and disputes**

- 4.1 The Subcontractor shall indemnify the Main Contractor against all losses, claims, demands, costs and expenses incurred or suffered by the Main Contractor including all claims for liquidated damages by the Customer against the Main Contractor as a result of entering into this agreement and the Main Contract. Notwithstanding clause 7, liability under this clause 4.1 shall be unlimited.
- 4.2 The Main Contractor shall give to the Subcontractor notice in writing as soon as possible after it becomes aware of any dispute between the Main Contractor and the Customer arising out of the Main Contract
- 4.3 The Subcontractor shall:
- (i) pay to the Main Contractor the amount of all costs and expenses (including legal and out-of-pocket expenses) reasonably incurred by the Main Contractor in connection with the negotiation, preparation, execution and perfection of this agreement and any other document referred to in it;
  - (ii) on demand, pay to the Main Contractor the amount of all costs and expenses (including legal and out-of-pocket expenses) incurred by the Main Contractor in connection with enforcing or preserving any rights under, or monitoring the provisions of this agreement, and any other document referred to in it; and
  - (iii) indemnify the Main Contractor against any cost, loss or liability the Main Contractor incurs in relation to all stamp, documentary, registration and other similar duties and taxes payable in respect of this agreement and any other document referred to in it.
- 4.4 The Subcontractor shall pay the Main Contractor any amounts due to the Main Contractor within 30 days of date of invoice, unless otherwise stated in this agreement.

**5. Fees, charges and expenses**

- 5.1 The Main Contractor shall pay to the Subcontractor within 30 days from the end of the month that the Main Contractor receives full payment from the Customer under the Main Contract
- 5.2 The Main Contractor may at any time and at its option, without notice to the Subcontractor, set off any liability of the Subcontractor to the Main Contractor (including any amounts due under clause 4 above) against any liability of the Main Contractor to the Subcontractor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. If the liabilities to be set off are expressed in different currencies, the Main Contractor may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Main Contractor of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.

**6. Compliance with laws and policies**

- 6.1 Each party shall at its own expense comply with all laws and regulations relating to its activities under this agreement, as they may change from time to time, and with any conditions binding on it in any applicable licences, registrations, permits and approvals.
- 6.2 The Subcontractor shall comply with the Mandatory policies as the Main Contractor or the relevant industry body may update them from time to time;
- 6.3 The Supplier or Subcontractor shall plan, implement and control a process that prevents the supply of counterfeit materials or conflict materials.

**7. Limitation of liability**

- 7.1 Nothing in this agreement shall limit or exclude the liability of either party for:
- (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - (ii) fraud or fraudulent misrepresentation or wilful default; and
  - (iii) any matter for which it would be unlawful to exclude or restrict liability.
- 7.2 Subject to clause 7.1:
- (i) Neither party shall under any circumstances whatever be liable to the other, whether in contract, tort (including negligence), equity (including restitution), breach of statutory duty, or otherwise, for:
  - (ii) any loss of profit, sales, revenue, or business;
  - (iii) loss of anticipated savings;

- (iv) loss of or damage to goodwill;
- (v) loss of agreements or contracts;
- (vi) loss of use or corruption of software, data or information;
- (vii) any loss arising out of the lawful termination of this agreement or any decision not to renew its term; or
- (viii) any *ex gratia* payment or sum paid in settlement of a claim paid by one party without the prior written approval of the other;
- (ix) the total liability of either party for **damage to property** caused by the negligence of its employees in connection with this agreement shall be limited to £5 million for any one event or series of connected events; and
- (x) the total liability of either party to the other in respect of **all other loss or damage** arising under or in connection with this agreement, whether in contract, tort (including negligence), equity (including restitution), breach of statutory duty, or otherwise, shall in no circumstances exceed £5 million for the entire term of this agreement.

7.3 The Main Contractor shall not be responsible to the Subcontractor for any failure to perform its obligations under this agreement where there is a corresponding failure by the Customer to perform its obligations under the Main Contract, provided that the Main Contractor takes all reasonable steps to pursue its rights under the Main Contract.

7.4 **No limitations in respect of deliberate default.** Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

7.5 **No liability for claims not notified within 6 months.** Unless a party notifies the other party that it intends to make a claim in respect of an event within the notice period, the other party shall have no liability for that event. The notice period for an event shall start on the day on which the party wishing to make a claim became, or ought reasonably to have become, aware of [the event having occurred and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

## 8. Commencement and duration

This agreement shall be effective from the Effective Date and shall continue in force until the parties have discharged all their obligations under it unless:

- (i) the Main Contract is terminated for any reason, in which case this agreement shall terminate immediately and automatically, without further action being necessary by the parties, and subject to all the rights of the parties accrued up to the date of termination; or
- (ii) this agreement is terminated by one of the parties under clause 9.1.

## 9. Termination

9.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (i) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 20 days after being notified in writing to make such payment;
- (ii) the other party commits a material breach of any material term of this agreement (and (if such breach is remediable) fails to remedy that breach within a period of 20 days after being notified [in writing] to do so;
- (iii) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (iv) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors
- (v) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986; or
- (vi) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
- (vii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (viii) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (ix) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (x) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (xi) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(iii) to clause 9.1(x) (inclusive);
- (xii) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

(xiii) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy;

9.2 The Main Contractor may terminate this agreement immediately by notice in writing if the Subcontractor is in breach of its compliance obligations under clause 6.

**10. Inspection**

The Main Contractor or its representatives from any regulatory or industry body may access and inspect any of the Subcontractor's premises in order to inspect the goods being manufactured by the Subcontractor

The Subcontractor will provide at least 1 Business Days' written notice of its intention to conduct an inspection under agreed terms unless such inspection is required in relation to a suspected breach or emergency in which event no notice is required.

**11. Further assurance**

Each party shall and shall use all reasonable endeavours to procure that any necessary third party shall promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

**12. Third party rights**

No one other than a party to this agreement, shall have any right to enforce any of its terms.

**13. No partnership or agency**

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

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

**14. Conflict**

14.1 If there is any conflict between Schedule 0 and the other clauses and Schedules of this agreement, the other clauses and schedules of this agreement shall take precedence.

**15. Governing law**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

15.1 Jurisdiction

15.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

**Main Contract**

**Mandatory Policies**

Micrometric Code of Conduct attached

Signed by a Director for and on behalf of MICROMETRIC LIMITED

.....  
Director

Signed by a Director for and on behalf of [NAME OF SUBCONTRACTOR]

.....  
Director