



**MOTION IMPOSSIBLE**

## **TERMS AND CONDITIONS (GOODS)**

### **1. Interpretation - The following definitions and rules of interpretation apply in this agreement.**

#### **1.1 Definitions:**

**Additional Services Fees:** the fees payable for any Excluded Services or Services provided outside of the Warranty Period as notified to the Customer at the time.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 15.8.

**Contract:** the contract between Motion Impossible and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**Customer:** the person, organisation, company or firm who purchases the Goods and/or Services from Motion Impossible.

**Delivery Location:** has the meaning given in clause 4.2.

**Deposit:** the sum payable on completion of the Order process.

**Force Majeure Event:** has the meaning given to it in clause 14.

**Goods:** the goods (or any part of them) set out in the Order.

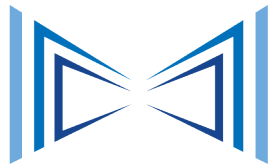
**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and Motion Impossible.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's order for the supply of Goods howsoever received.

#### **1.2 Interpretation:**

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its [personal representatives,] successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) 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.
- (e) A reference to **writing** or **written** includes faxes and emails.



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### 2. Basis of contract

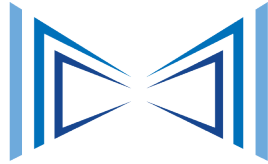
- 2.1 The Order constitutes an offer by the Customer to purchase Goods in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when Motion Impossible has accepted the Order and the Customer has paid the Deposit at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by Motion Impossible and any descriptions of the Goods contained on its website are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by Motion Impossible shall not constitute an offer, and is only valid for a period of 14 Business Days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods except where application to one or the other is specified.

### 3. Goods

- 3.1 The Goods are described on Motion Impossible's website as modified by any applicable Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods specification supplied by the Customer. The Customer shall indemnify Motion Impossible against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Motion Impossible arising out of or in connection with any claim made against Motion Impossible for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Motion Impossible's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 Motion Impossible reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and shall notify the Customer in any such event.

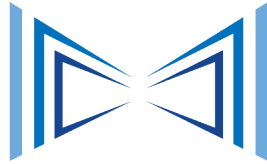
### 4. Delivery of Goods

- 4.1 Motion Impossible shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.



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- 4.2 Motion Impossible shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Motion Impossible notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Motion Impossible shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Motion Impossible with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Customer fails to accept delivery of the Goods within three Business Days of Motion Impossible notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Motion Impossible's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Motion Impossible notified the Customer that the Goods were ready; and
  - (b) Motion Impossible shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If [ten] Business Days after Motion Impossible notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Motion Impossible may resell or otherwise dispose of part or all of the Goods.
- 4.7 Motion Impossible may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5. Quality of Goods**
- 5.1 Motion Impossible warrants that on delivery and for 12 months thereafter (Warranty Period), the Goods shall:
- (a) conform in all material respects with their description and any the Goods Specification;
  - (b) be free from material defects in design, material and workmanship; and
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - (d) be fit for any purpose held out by Motion Impossible.
- 5.2 Extended warranties are available from Motion Impossible on payment of the required fee and are subject to our terms of Service.
- 5.3 Subject to clause 5.4, during the Warranty Period, Motion Impossible shall, at its option, repair or replace the defective Goods free of charge, or refund the price of the defective Goods in full if:



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- (a) the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) Motion Impossible is given a reasonable opportunity of examining the Goods; and
- (c) the Customer (if asked to do so by Motion Impossible) returns the Goods to Motion Impossible's place of business at Motion Impossible's cost.

5.4 Motion Impossible shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.3;
- (b) the defect arises because the Customer failed to follow Motion Impossible's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of Motion Impossible following any drawing, design or Goods Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without Motion Impossible's written consent;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.5 If a defect is caused by a reason set out in clause 5.4 above, any repairs carried out by Motion Impossible shall be subject to our terms of Service and the Customer shall be responsible for the costs of the repairs together with all costs and charges of packing, insurance, transport and delivery.

5.6 Insofar as the Goods comprise or contains equipment or components which were not manufactured or produced by Motion Impossible (including but not limited to the gyro), the Customer shall be entitled only to such warranty or other benefit as Motion Impossible has received from the manufacturer.

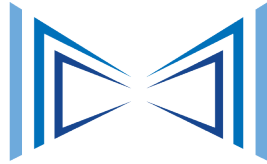
5.7 Except as provided in this clause 5, Motion Impossible shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.8 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Motion Impossible.

## 6. Title and risk

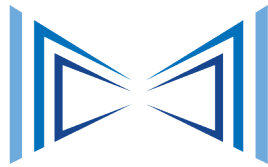
6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until Motion Impossible receives payment in full (in cash or cleared funds) for the Goods and any other goods that Motion Impossible has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.



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- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Motion Impossible's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Motion Impossible's behalf from the date of delivery;
  - (d) notify Motion Impossible immediately if it becomes subject to any of the events listed in clauses 12.2(b) and 12.2(c); and
  - (e) give Motion Impossible such information relating to the Goods as Motion Impossible may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may use the Goods in the ordinary course of its business (but not otherwise) before Motion Impossible receives payment for the Goods.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clauses 12.2(b) and 12.2(c), then, without limiting any other right or remedy Motion Impossible may have:
- (a) the Customer's right to use the Goods in the ordinary course of its business ceases immediately; and
  - (b) Motion Impossible may at any time:
    - (i) require the Customer to deliver up all Goods in its possession; and
    - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. Charges and payment**
- 7.1 The price for the Goods:
- (a) shall be the price confirmed in the acceptance of the Order or, if no price is quoted, the price set out on the website as at the date of the Order;
  - (b) shall be paid in full before the Goods are dispatched to the Customer; and
  - (c) shall be exclusive of all costs and charges of packaging, insurance and transport, which shall also be paid by the Customer before dispatch.
- 7.2 Unless otherwise agreed in writing, the Customer must pay the Deposit on acceptance of the Order. Motion Impossible will invoice the Customer for the balance prior to the Goods being dispatched. Goods will not be dispatched until payment in full has been received.
- 7.3 All amounts due under the Contract shall be paid by the Customer to Motion Impossible in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). Motion Impossible shall invoice the Customer for the charges at the relevant time, together with expenses and the costs of materials (and VAT, where appropriate).



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- 7.4 The Customer must ensure that any bank charges associated with an electronic payment are paid by the Customer and are not deducted from the invoice amount.
- 7.5 The Customer shall pay each invoice submitted to it by Motion Impossible in full, and in cleared funds, within 14 days of receipt.
- 7.6 Without prejudice to any other right or remedy that Motion Impossible may have, if the Customer fails to pay on the due date or any payment is subsequently dishonoured or cancelled Motion Impossible may charge the Customer for all bank charges and ancillary expenses incurred by them together with interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment but at 4% a year for any period when that base rate is below 0%.
- 7.7 Time for payment shall be of the essence of the Contract.

### **8. The Deposit**

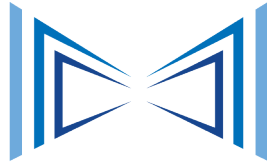
- 8.1 On placing an Order for Goods (unless agreed otherwise in writing), the Customer must pay a non-refundable deposit.
- 8.2 The deposit will be deducted from the overall cost of the Goods prior to dispatch.
- 8.3 If the Customer terminates the Contract under clause 12, (unless otherwise agreed in writing) Motion Impossible will retain the full deposit towards the costs incurred by them prior to the date of termination. In the event that these costs exceed the deposit paid, Motion Impossible reserves the right to charge the Customer for the difference.

### **9. Intellectual property rights**

All Intellectual Property Rights in or arising out of or in connection with Goods shall be owned by Motion Impossible.

### **10. Confidentiality**

- 10.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.2.
- 10.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.



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10.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

### 11. Limitation of liability:

11.1 Nothing in these Conditions shall limit or exclude Motion Impossible's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).

11.2 Subject to clause 11.1 Motion Impossible shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) any indirect or consequential loss.

11.3 Subject to clause 11.1, Motion Impossible's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the total charges paid under the Contract.

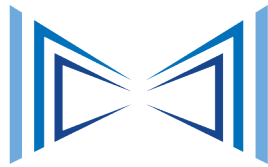
11.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

11.5 This clause 11 shall survive termination of the Contract.

### 12. Termination

12.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than 14 days' written notice.

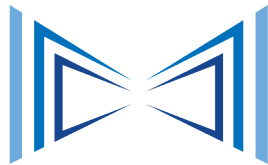
12.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:



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- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;]
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.3 Without affecting any other right or remedy available to it, Motion Impossible may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 12.4 Without affecting any other right or remedy available to it, Motion Impossible may suspend all further deliveries of Goods under the Contract or any other contract between the Customer and Motion Impossible if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clauses 12.2(b) and 12.2(d), or Motion Impossible reasonably believes that the Customer is about to become subject to any of them.
- 13. Consequences of termination**
- 13.1 On termination of the Contract the Customer shall immediately pay to Motion Impossible all of Motion Impossible's outstanding unpaid invoices and interest and, in respect of Maintenance Services supplied but for which no invoice has been submitted, Motion Impossible shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 13.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 13.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.





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**14. Force majeure**

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

**15. General**

**15.1 Assignment and other dealings**

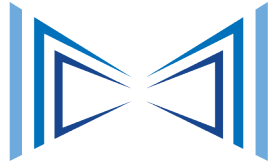
- (a) Motion Impossible may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Motion Impossible.

**15.2 Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified by each party in the Order or from time to time.
- (b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**15.3 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**15.4 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.



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- 15.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 15.6 **Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
  - (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
  - (c) Nothing in this clause shall limit or exclude any liability for fraud.
- 15.7 **Third parties rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 15.8 **Variation.** Motion Impossible may revise these Conditions at any time and shall notify the Customer in any such event.
- 15.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 15.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.