

## 1. INTERPRETATION

### 1.1 Definitions:

**Accessories Products:** means Off the Deck's luxury golf mat, B1E golf balls, golf bags, golf clubs, yacht golf greens, head covers, golf gloves and golf nets.

**Applicable Laws:** all applicable laws, statutes, regulations from time to time in force.

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

**Business Hours:** the period from 9.00 am to 5.00 pm UK time on any Business Day.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 18.8.

**Contract:** the contract between Off the Deck and the Customer for the supply of Products in accordance with any purchase order, agreement for sale/purchase or other instrument for the sale and purchase of goods between Off the Deck and the Customer (the Contract Details), and these Conditions.

**Customer:** the person or firm specified as the Customer in the Contract Details.

**Delivery Date/Period:** means the delivery date or the delivery period which is agreed in writing between the parties for delivery of the Products.

**Delivery Location:** as specified in the Contract Details.

**Delivery Zone:** means a Delivery Location in any of the following locations: United Kingdom; Holland; Monaco; Cannes Antibes; La Ciotat; Toulon; Palma de Mallorca; Portals Nous; Port Adriano; Barcelona; Tarragona; Vilanova; Bremen; Hamburg; Kiel; Rendsburg; Flensburg; Genova; San Remo; Imperia; La Spezia; Livorno and Viareggio.

**End User:** means anyone who uses the Products and the Software.

**End User Data:** means any data (including personal data) relating to any End User which Off the Deck needs to access and/or process in order to carry out its obligations and exercise its rights pursuant to the Contract.

**Estimated Shipment Date:** means the date of shipment identified in the Contract Details.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks 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.

**Products:** means the products identified in the Contract Details including any Software.

**SeaDriveCX Products:** means the SeaDriveCX golf entertainment system and satellite unit.

**Software:** the computer programs forming part of the Products.

**Third Party Licensor:** the third party which is the licensor of the Foresight Software or any of the Third Party Software and/or which is a party to the Foresight Software Terms and/or the Third Party Software Terms.

**Third Party Software:** the software identified as such in the Contract Details

**Third Party Software Terms:** the licence agreements or other terms relating to the use of the Third Party Software which are available on request from Off the Deck.

**User Guide:** means the guide for users of the Products available at delivery.

### 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 legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

(d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to **writing** or **written** includes email (provided the email is supported by a valid server delivery receipt).

1.3 If there is any conflict or ambiguity between: the Contract Details and/or the Conditions, then a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

## 2. BASIS OF CONTRACT

2.1 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 law, trade custom, practice or course of dealing. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.2 Any samples, drawings, descriptive matter or advertising issued by Off the Deck and any descriptions of the Products contained in Off the Deck's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of the Contract nor have any contractual force.

## 3. DELIVERY OF PRODUCTS

3.1 Off the Deck shall use all reasonable endeavours to deliver the Products to the Delivery Location or such other location as the parties may agree on within the agreed Delivery Date/Period. Delivery of the Products shall be completed on the completion of unloading of the Products at the Delivery Location. Except where stated otherwise, Off the Deck shall be responsible for all costs in relation to delivery of the SeaDriveCX Products except where delivery is to take place outside the Delivery Zones in which case additional charges will apply.

3.2 Off the Deck will use all reasonable endeavours to ensure that the Products are delivered to the Delivery Location by or within the Delivery Date/Period and Off the Deck will inform the Customer promptly if Off the Deck anticipates that it will not be able to deliver the Products by or within the Delivery Date/Period and will seek to arrange an alternative Delivery Date/Period with the Customer. However, any Delivery Date/Period is approximate only, and the time of delivery is not of the essence. Delays in the delivery of the Products shall not entitle the Customer to refuse to take delivery of the Products, terminate the Contract; or demand a reduction in the price or request a refund.

3.3 Off the Deck shall have no obligation to deliver the Products until it has received payment in clear funds from the Customer of Off the Deck's invoices for such Products. Off the Deck shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide Off the Deck with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

3.4 Off the Deck shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Off the Deck with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

3.5 If the Customer fails to accept delivery of the Products at the Delivery Location on or during the Delivery Date/Period then except where such failure or delay is caused by a Force Majeure Event or by Off the Deck's failure to comply with its obligations under the Contract in respect of the Products:

(a) delivery of the Products shall be deemed to have been completed at 9.00 am on the third Business Day following the Delivery Date/Period; and

(b) Off the Deck shall store the Products until actual delivery takes place and charge the Customer for all related costs and expenses (including insurance).

3.6 If ten Business Days after the Delivery Date/Period the Customer has not accepted delivery of the Products, Off the Deck may resell or otherwise dispose of part or all of the Products and shall account to the Customer for any sums received from such sale after deducting reasonable storage and selling costs.

3.7 Off the Deck may deliver the Products 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.

#### 4. QUALITY OF PRODUCTS, WARRANTIES, LIABILITIES AND REMEDIES OF THE CUSTOMER

- 4.1 Subject to the provisions of the Contract and the Customer's strict compliance with the Contract, the User Guide and the guidance and instructions in any manuals supplied with the Products (the **Manual**) and all other conditions confirmed in writing to the Customer from time to time, Off the Deck warrants the SeaDriveCX Products for a period of one year (unless otherwise expressly stated in clause 4.3 or in the Contract Details) from the date of shipping (the **Warranty Period**) that the SeaDriveCX Products will conform to the manufacturer's specifications as at the date of shipping, or any specifications provided by the Customer and expressly set out in the Contract Details.
- 4.2 If during the Warranty Period the SeaDriveCX Products are found by Off the Deck to be defective, Off the Deck will either repair the SeaDriveCX Products, replace the defective SeaDriveCX Products with new SeaDriveCX Products, or exchange the SeaDriveCX Products with equivalent SeaDriveCX Products. The limited warranty in clause 4.1 is available only to the original purchaser of the SeaDriveCX Products and is expressly made in lieu of all other warranties. The remedies set out in this clause are the exclusive remedies of the Customer in relation to any defect in the SeaDriveCX Products or breach of the warranty in clause 4.1.
- 4.3 The warranty in clause 4.1 does not apply to SeaDriveCX Products that have been refurbished, sold as a certified pre-owned unit, or damaged by accident, shipment, handling or abuse, or alterations or repairs not performed by Off the Deck including the addition of any software to the computer or the connection to any web or internet site or service not approved by Off the Deck, or any defect arising from wilful damage or negligence of the Customer, as a result of fair wear and tear or abnormal working conditions, or failure to follow Off the Deck's reasonable instructions for storage, installation, commissioning, operation and maintenance of the SeaDriveCX Products including but not limited to the Manual or (if there are none) good trade practice regarding the same.
- 4.4 Off the Deck does not warrant that there will be no interruptions in the performance or operation of the Software, or hardware due to acts of God (power failures, storms, etc.) or computer or software viruses. The Customer acknowledges that use of the Software is subject to certain usage requirements as set out in the User Guide including in relation to the availability of wi-fi. The Customer also acknowledges that it is not possible to test computer software and hardware in all possible circumstances and that it is therefore not possible to produce software that is free from error in all respects. Similarly, Off the Deck does not warrant that any hardware recommended or sold will work with all future upgrades to the software. Any attempts by the Customer to disassemble, modify or repair any SeaDriveCX Products or any component parts without the express prior written authorisation of Off the Deck shall automatically render all warranties null and void.
- 4.5 To make a claim under the warranty provided in clause 4.1, the Customer must: (1) notify Off the Deck using the contact details contained in the User Guide of the nature of the problem within the Warranty Period and within a reasonable time of discovery; and (2) at Off the Deck's sole discretion, make the defective SeaDriveCX Products available for inspection by Off the Deck either (i) on the Customer's vessel or at another agreed location or in relation to the Software by the use of remote IT access (with the Customer's consent) or (ii) by delivering the defective SeaDriveCX Products, to the address designated by Off the Deck, in packaging that will protect against further damage. At Off the Deck's option, the SeaDriveCX Products may be serviced at the Customer's location or at a location designated by Off the Deck.
- 4.6 The Customer shall be responsible for all costs of shipping and delivery of the defective SeaDriveCX Products referred to in clause 4.6, provided that if there is a valid claim under the warranty in clause 4.1, then: (i) Off the Deck shall refund the Customer the reasonable delivery costs actually incurred by the Customer providing that the defective SeaDriveCX Products were returned by the Customer from a Delivery Zone and the Customer provides evidence of such costs which is satisfactory to Off the Deck (acting reasonably) and (ii) Off the Deck shall be responsible for delivering replacement SeaDriveCX Products to the Customer and the costs for doing so provided that any such replacement SeaDriveCX Products are delivered to a Delivery Zone. Notwithstanding the foregoing, in no event shall Off the Deck be responsible for any rapid land and/or air freight costs or for delivery costs to or from any location which is not within a Delivery Zone.
- 4.7 Off the Deck shall be under no liability under the warranty (or any other warranty condition or guarantee) if the Price has not been paid in full or if the Customer has opened, dismantled or tampered with the SeaDriveCX Products without the authorisation of Off the Deck.
- 4.8 Off the Deck shall not be liable for the SeaDriveCX Products' failure to comply with the warranty set out in clause 4.1 if:

- (a) the Customer makes any further use of such Products after giving a notice in accordance with clause 4.6; or
- (b) the defect arises as a result of Off the Deck following any drawing, design or specification supplied by the Customer;
- (c) the Products differ from the published specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

- 4.9 These Conditions shall apply to any repaired or replacement Products supplied by Off the Deck.

#### 5. TITLE AND RISK

- 5.1 Risk in the Products shall pass to the Customer on completion of delivery. Title to the Software shall at all times remain with Off the Deck or the third party licensor of the Software. Title to the Products (excluding any Software) shall only pass to the Customer upon receipt by Off the Deck of payment in full (in cash or cleared funds) for the Products and any other Products that Off the Deck has supplied to the Customer in respect of which payment has become due, in which case title to the Products shall pass at the time of payment of all such sums.
- 5.2 Until title to the Products has passed to the Customer, the Customer shall:
- (a) store the Products separately from all other Products held by the Customer so that they remain readily identifiable as Off the Deck's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
  - (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price on Off the Deck's behalf from the date of delivery;
  - (d) notify Off the Deck immediately if it becomes subject to any of the events listed in clause **15.1(b)** to clause 15.1(c) (inclusive); and
  - (e) give Off the Deck such information as Off the Deck may reasonably require from time to time relating to:
    - (i) the Products; and
    - (ii) the ongoing financial position of the Customer.
- 5.3 Off the Deck may recover Products in which title has not passed to the Customer. The Customer irrevocably licenses Off the Deck, its officers, employees and agents, to enter any premises of the Customer or any vessel, in order to satisfy itself that the Customer is complying with the obligations in clause 5.2 and to recover any Products in which title has not passed to the Customer.
- 5.4 Off the Deck may at any time after delivery elect to transfer title in the Products to the Customer, in which case the Customer shall immediately pay the Price to Off the Deck.
- #### 6. SOFTWARE LICENCE
- 6.1 The Customer:
- (a) acknowledges and agrees that Off the Deck permits the Customer to use the Foresight Software pursuant to the licence granted to the Customer under the Foresight Software Terms and the Customer agrees that it shall be bound by, and shall comply with the Foresight Software Terms, as though it is the licensee and Off the Deck is the licensor pursuant to such terms (and for these purposes all references to "You" are deemed to be references to "the Customer" and all references to "foresight", "we" and "our" and equivalent terms are deemed to be references to Off the Deck), provided always that the Customer shall have no right to permit any third party to use the Foresight Software;
  - (b) acknowledges and agrees that by entering into this Contract it shall be bound by and shall comply with the Third Party Software Terms as a user or licensee of the software licensed pursuant to such terms, provided always that the Customer shall have no right to permit any third party to use the Third Party Software;
  - (c) shall not, whether by act or omission, cause Off the Deck to be in breach of the Foresight Software Terms or the Third Party Software Terms;
  - (d) grants to the relevant Third Party Licensor any rights which are to be granted by a user or licensee pursuant to the Foresight Software Terms and/or the Third Party Software Terms and also grants such rights to Off the Deck (with the right for Off the Deck to further grant such rights to the relevant Third Party Licensor) to the extent that Off the Deck needs to do so in order comply

with the Foresight Software Terms and/ or the Third Party Software Terms; and

- (e) agrees that any terms restricting the Customer's rights and remedies pursuant to the Foresight Software Terms or the Third Party Software Terms apply to it and its use of the relevant Third Party Software and can be relied upon by Off the Deck.

6.2 The Customer shall indemnify and keep indemnified Off the Deck against all losses, costs, claims, expenses and liabilities arising out of or in connection with any breach by the Customer of clause 6.1.

## 7. CUSTOMER'S OBLIGATIONS

7.1 The Customer shall:

- (a) provide Off the Deck, its employees, agents, consultants and subcontractors, with access to the Customer's or its End Customer's premises (including vessels), and other facilities as reasonably required by Off the Deck to provide the Products and to fulfil any of its obligations pursuant to the Contract;
- (b) provide Off the Deck with such information and materials as Off the Deck may reasonably require in order to supply the Products, and ensure that such information is complete and accurate in all material respects;
- (c) provide Off the Deck with remote access to the Products in order to diagnose and correct errors in the Software; and
- (d) comply with the User Guide.

7.2 If Off the Deck's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, Off the Deck shall have the right to suspend and relieve performance of its obligations until the Customer remedies the Customer Default, to the extent the Customer Default prevents or delays Off the Deck's performance of any of its obligations;
- (b) Off the Deck shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Off the Deck's failure or delay to perform any of its obligations as set out in this clause 7.2 ; and
- (c) the Customer shall reimburse Off the Deck on written demand for any costs or losses sustained or incurred by Off the Deck arising directly or indirectly from the Customer Default.

## 8. CHARGES AND PAYMENT

8.1 The Customer shall pay for Products in accordance with this clause 8.

8.2 The Products price excludes:

- (a) For SeaDriveCX Products:
  - (i) delivery of Products to a Delivery Location outside of a Delivery Zone or rapid land and/or air freight requirements which shall be invoiced to the Customer in addition to the price;
  - (ii) amounts in respect of VAT, which the Customer shall additionally be liable to pay to Off the Deck at the prevailing rate (if applicable), subject to the receipt of a valid VAT invoice; and
  - (iii) any upgrades (unless otherwise stated).
- (b) For Accessories Products:
  - (i) delivery of Products to any Delivery Location which shall be invoiced to the Customer in addition to the price;
  - (ii) amounts in respect of VAT, which the Customer shall additionally be liable to pay to Off the Deck at the prevailing rate (if applicable), subject to the receipt of a valid VAT invoice; and
  - (iii) any upgrades (unless otherwise stated).

8.3 Off the Deck will invoice the Customer at the following intervals

- (a) For SeaDriveCX Products:
  - (i) 50% of the Price on acceptance of the Contract; and
  - (ii) 50% of the Price 30 days prior to the Estimated Shipment Date provided that if the Estimated Shipment Date is less than 30 days after the date

of the Contract then, Off the Deck shall invoice such amount on the date of signature of the Contract.

(b) For Accessories Products:

- (i) 100% of the Price on acceptance of the Contract.

8.4 The Customer shall pay invoices in full in cleared funds within 30 days of the invoice date provided that if the Estimated Shipment Date is less than 30 days after the date of the invoice then the Customer must pay such invoice prior to the Estimated Shipment Date. Payment shall be made to the bank account set out on the relevant invoice or otherwise notified to the Customer by Off the Deck in writing. If the Customer uses a credit card to pay the relevant invoice, Off the Deck shall be entitled to charge an additional 2% of the Price.

8.5 If the Customer fails to make any payment due to Off the Deck under the Contract by the due date for payment, then, without limiting Off the Deck's remedies under clause 15:

- (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- (b) Off the Deck may suspend all deliveries of Products until payment has been made in full.

8.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 9. INTELLECTUAL PROPERTY RIGHTS

9.1 All Intellectual Property Rights in or arising out of or in connection with the Products (including the Software) shall be owned by Off the Deck or its licensors.

9.2 The Customer shall grant or procure the grant of a non-exclusive licence to Off the Deck to access and use the End User Data to the extent necessary to allow it to carry out its obligations and to exercise its rights pursuant to the Contract.

## 10. DATA PROTECTION

10.1 Each party shall, at its own expense, ensure that it complies with and assists the other party to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data, including (without limitation) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 and the General Data Protection Regulation ((EU) 2016/679) as retained in UK law. This clause is in addition to, and does not reduce, remove or replace, a party's obligations arising from such requirements.

10.2 Where Off the Deck processes End User Data, Off the Deck shall do so as a data controller and will process this in accordance with Off the Deck's privacy notice which can be found at [www.offthedeck.com](http://www.offthedeck.com).

## 11. COMPLIANCE WITH APPLICABLE LAWS

11.1 The Customer shall comply will all Applicable Laws (which shall include but not limited to the International Convention for the Prevention of Pollution from Ships (**MARPOL**)) when using the Products and the Customer shall indemnify Off the Deck against all liabilities, costs, expenses, damages and losses (including but not limited to 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 professional costs and expenses) suffered or incurred by Off the Deck arising out of or in connection with any claim made against Off the Deck for breach by the Customer of such Applicable Laws, save where any such breach was caused by Off the Deck.

11.2 The Customer's liability under the indemnity contained at clause 11.1 is unlimited.

## 12. CONFIDENTIALITY

12.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, or clients of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 12.2.

12.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with

the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

### 13. LIMITATION OF LIABILITY

13.1 This clause sets out the entire financial liability of Off the Deck (including any liability for the acts or omissions of Off the Deck's respective employees, agents and sub-contractors) to the Customer whether arising in contract, tort (including negligence), breach of statutory duty or otherwise howsoever arising under or in connection with the Contract or the Products and references to "liability" in this clause shall be construed accordingly.

13.2 Nothing in the Contract shall limit or exclude the liability of Off the Deck for death or personal injury arising from Off the Deck's negligence, fraud or fraudulent misrepresentation, breach of the terms implied by s12 Sale of Products Act 1979 or defective products under s2 Consumer Protection Act 1987 or any other liability which cannot be lawfully excluded or limited.

13.3 Subject to clause 13.2, Off the Deck's total aggregate liability arising out of or in connection with the Contract and/or the Products shall not exceed the amounts paid by the Customer for the Products directly related to such liability.

13.4 Subject to clause 13.2, Off the Deck shall have no liability to the Customer or any other person for any:

- (a) loss of business,
- (b) loss of revenue,
- (c) loss of goodwill,
- (d) loss of data, equipment or property, and

in each case whether direct or indirect; or

- (e) special, indirect, incidental or consequential loss.

13.5 Save as expressly set out in these Conditions, all other warranties and conditions of any kind with respect to the Products, either express or implied, including without limitation, any implied warranties or conditions of merchantability and fitness for a particular purpose are excluded to the fullest extent permitted by the law.

### 14. ASSUMPTION OF RISK AND CUSTOMER LIABILITY

14.1 The use of the Products and/or simulated golf equipment and all associated activities, including but not limited to, swinging golf clubs and/or hitting golf balls outside or within an enclosed environment is a dangerous calculated risk activity which can result in serious permanent bodily injury or death to its participants or bystanders which Off the Deck cannot entirely eliminate. The Customer understands that in the absence of any direct negligence or other breach of duty by Off the Deck, Off the Deck, and/or any persons who the Customer permits to use the Products does so entirely at their own risk and liability.

14.2 Subject to clause 13.2, the Customer assumes all risks of any nature for any death, injury or other damage to the Customer or third party, the Customer's property and the property of others, foreseeable or not, which may in any way arise, directly or indirectly, out of the sale and/or use of the Products, and from the actions – specifically including any negligent acts or omissions – of all persons involved either directly or indirectly in the simulated golfing activities made possible by the Products. The Customer acknowledges and agrees that the activities covered by this Contract are recreational activities in which the Customer, and persons acting through the Customer, will be voluntarily participating for their own enjoyment.

14.3 The Customer warrants and represents that all persons using the Products, including the Customer, if the Customer is an individual, and all employees, clients, guests, invitees of the Customer and all other persons, are of sufficient age, understanding and skill to use the Products and all ancillary equipment in a controlled and responsible manner, and are in good physical and mental health and able to withstand the physical and mental stresses inherent in the activities relating to the use of the Products. The Customer further warrants and represents that it will not permit use of the Products by any person who has a health-related problem or condition that may affect the person's ability to participate in any activities relating to the Products, or affect the safety of those around them, or by any person under the influence of alcohol, controlled

substances, or drugs, prescription or otherwise, prior to or during any activities involving or relating to the Products.

14.4 The Customer must not remove, cover, alter or otherwise tamper with any notices, instructions or labelling that may be placed on or with the Products by Off the Deck or any third party.

14.5 The Customer must ensure that the Products are used safely and as directed. The Customer must follow and, where relevant, clearly communicate any safety instructions to prevent damage to property, injury and/or death and ensure that the Products are not tampered with in any manner, shape or form and maintain the Products in strict compliance with Off the Deck's operating instructions, guidance, maintenance instructions, User Guide and/or training. In the absence of any negligence or other breach of duty by Off the Deck, the use of the Products is entirely at the Customer's risk.

14.6 The Customer should satisfy themselves prior to order that the Products and the environment in which the Products are to be used including but not limited to any structure design is suitable and safe for their circumstances and/or where the Customer supplies or installs any equipment or carries out any works themselves and if the Customer removes any warning on the Product that they are aware that the responsibility and liability for the design, safety and use of the Products and environment lies with them in accordance with this provision and the other provisions in the Contract and that they should take measures to eliminate or negate the effects of the Products (to include any leading edges or design elements) that could lead to loss or damage to any property or person.

14.7 The Customer shall indemnify and hold Off the Deck harmless against all losses, costs, claims, expenses and liabilities arising out of any claim by or for any loss or damage to, any person or property occasioned directly or indirectly by, or arising out of or in connection with:

- (a) the use or operation or possession of any part of the Products in a negligent manner or otherwise than in accordance with Off the Deck's operating instructions, User Guide and Manuals; or
- (b) any breach of the Customer's obligations under the Contract or as a result of any customisation or alteration carried out to the Products by the Customer whether such works are approved by Off the Deck or not or where the works are carried out by Off the Deck at the request of the Customer.

14.8 Where space dimensions differ from Off the Deck's recommended minimums and/or where Off the Deck does not carry out all design and installation works, the Customer accepts full risk, responsibility and liability stemming from the design, set-up, use, and operation of the Products and simulated golf equipment.

14.9 The Customer/user of the equipment must inspect the Products prior to each and every use to ensure the Products are secured, in good working order, and that any safety features are correctly installed, maintained and in their correct positions.

### 15. TERMINATION

15.1 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:

- (a) the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified 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), obtaining a moratorium, 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
- (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.

15.2 Without affecting any other right or remedy available to it, Off the Deck 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 and fails to pay within 7 days following receipt of a further notice from Off the Deck notifying the Customer that payment is overdue and requesting payment.

15.3 Without affecting any other right or remedy available to it, Off the Deck may suspend all further deliveries of Products under the Contract or any other contract between the Customer and Off the Deck 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 clause 15.1(b) to clause 15.1(c) (inclusive), or Off the Deck reasonably believes that the Customer is about to become subject to any of them.

## 16. CONSEQUENCES OF TERMINATION

### 16.1 On termination of the Contract:

- (a) the Customer shall immediately pay to Off the Deck all of Off the Deck's outstanding unpaid invoices and interest and, in respect of the Products supplied but for which no invoice has been submitted, Off the Deck shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Products which have not been fully paid for. If the Customer fails to do so, then Off the Deck may enter the Customer's premises (including vessels) and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- (c) the licences of Software granted to the Customer under or pursuant to this Contract shall continue unless Off the Deck terminate this Contract in accordance with 15.1(b) in which case all such rights and licences shall terminate.

16.2 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, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

16.3 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 and shall include but not limited to: 3.2 to 3.6 (inclusive), 4, 5, 6, 8, 9.1, 10 to 14 (inclusive) and 16 to 18 (inclusive).

## 17. FORCE MAJEURE

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 30 days, the party not affected may terminate the Contract by giving 7 days' written notice to the affected party.

## 18. GENERAL

### 18.1 Assignment and other dealings

Off the Deck may assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract. The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract provided that it shall be entitled to assign its rights under the Contract to a third party purchaser of the vessel for which the Products have been provided, subject to the Customer providing written notification to Off the Deck of the identity of the Assignee and the Assignee completing such documents and providing such information as Off the Deck may reasonably require in order to facilitate such transfer.

### 18.2 Notices

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its office as specified in the Contract Details; or
  - (ii) sent by email to the relevant email address in the Contract Details.
- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid airmail providing proof of postage, at 9.00 am on the fifth Business Day after posting; or
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 18.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

18.4 **Waiver.** Except as set out in this Contract, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

18.5 **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.

18.6 **Entire agreement.** The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on 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 misstatement based on any statement in the Contract.

18.7 **Third party 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.

18.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

18.9 **Governing law and Jurisdiction.** Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause.

The number of arbitrators shall be three.

The seat, or legal place, of arbitration shall be London, England.

The language to be used in the arbitral proceedings shall be English.

The governing law of the Contract shall be the substantive law of England and Wales.

For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to this Contract.

18.10 The Customer irrevocably appoints the Agent for Service in England as its process agent to receive on its behalf service of process in any proceedings in England and Wales. Such service shall be deemed completed on delivery to such process agent (whether or not it is forwarded to and received by the Customer). If for any reason the process agent ceases to be able to act as process agent or no longer has an address in England, the Customer irrevocably agrees to appoint a substitute process agent acceptable to Off the Deck and to deliver to Off the Deck a copy of the new process agent's acceptance of that appointment within 5 Business Days. The Customer irrevocably consents to any process in any proceedings anywhere being served in accordance with the provisions of this Contract relating to the service of notices. Such service will become effective 7 days after despatch. Nothing in this Contract will affect the right to serve process in any other manner permitted by law.

18.11 **Language.** This Contract is drafted in the English language. If this Contract is translated into any other language, the English language version shall prevail. Any notice given under or in connection with this Contract shall be in the English language. All other documents provided under or in connection with this Contract shall be in the English language, or accompanied by a certified English translation.