ADEY GROUP
TERMS AND CONDITIONS OF SUPPLY

1 DEFINITIONS:

1.1 In these terms and conditions (hereinafter collectively referred to as 'Conditions'):

'**Acknowledgement**' means the acknowledgement of an Order by the Supplier.

'**Adey**' means Adey Innovation Limited company number 05001590.

'**Adey Group**' means any subsidiary of Adey Holdings (2008) Limited (06738605).

'Buyer' 'you' means the person, firm, company or other entity purchasing the Products from the Adey Group member as both parties are identified in the Order;

'**Contrac**t' means any contracts made between Supplier and the Buyer for the sale and purchase of Products which shall include (but not limited to) contracts entered into between the Parties arising from the Order.

'**Products**' means any product, article or item which the Supplier sells (including part or parts of it) including those set out in the Order.

'**Order**' means any order (whether oral and written) for Products made by a Buyer to the Supplier.

'**Parties**' means the Supplier and the Buyer.

'**Specification**' means the specification and descriptions of any Products supplied or to be supplied.

'**Supplier**' '**we**' '**us**' '**our**' means any of the Adey Group, the specific member of the Adey Group as specified in the Acknowledgement.

1.2 In these Conditions headings will not affect the construction of these Conditions.

1.3 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

2. PRICE

2.1 The price quoted excludes VAT (unless otherwise stated). To the extent applicable, VAT will be charged at the rate applying at the time of delivery.

2.2 Our quotations lapse after 30 days (unless otherwise stated).

2.3 Subject to the provisions of clauses 4 and 5The price quoted includes delivery and packaging (unless otherwise stated).

2.4 Rates of tax and duties on the Products will be those applying at the time of delivery.

2.5 At any time before delivery we may adjust the price to reflect any increase in our costs of supplying the Products.

3. ORDERING

3.1 An Order (unless otherwise agreed by us in writing) shall be made through:

3.1.1 fax by faxing to the number 01242 546777;

3.1.2 by email to sales@adey.com; and/or

3.1.3 by our electronic data interchange ('EDI') system.

3.2 Each Order will set out (1) the type of Products; (2) the quantities ordered; (3) the location where the Products are to be delivered.

3.3 No binding Contract for the supply of the Products outlined in an Order shall be created until such time as the Supplier has issued an Acknowledgement.

4. DELIVERY AND RISK: UK CUSTOMERS

4.1 All delivery times quoted are estimates only. Time shall not be of the essence for delivery and we shall have no liability to you for any delay in delivery, or if a delivery is not with you on a specific date.

4.2 If you accept delivery of the Products after the estimated delivery time, you are doing so in the acknowledgment that you have no claim against us for delay (including indirect or consequential loss, or increase in the price of the Products).

4.3 Subject to clause 4.3, if we fail to deliver within a reasonable time, you may (by informing us in writing) cancel the Order, however, if you cancel the Contract your sole remedy against us will be for us to refund you all monies paid to us in respect of the cancelled Order.

4.4 Your right to cancel an Order shall expire upon the despatch of the Products.

4.5 We may, at our discretion, deliver the Products in instalments. Each instalment is treated as a separate Contract governed by these Conditions.

4.6 We may decline to deliver if:

4.6.1 we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or

4.6.2 the premises (or the access to them) are unsuitable for the delivery.

4.7 Where clause 4.6 applies, the parties agree that:

4.7.1 we will be entitled to recover the delivery cost from you;

4.7.2 we will be entitled to recover the restocking charge set out in clause 10.2; and

4.7.3 you will have no further claim against us under such Contract.

4.8 The Products are at your risk from the time of delivery.

4.9 Delivery occurs when you have signed for the Products and takes place either:

4.9.1 at our premises (if you are collecting them or arranging carriage); or

4.9.2 at your premises (if we are arranging carriage).

4.10 You must inspect the Products on delivery. If any Products are damaged (or not delivered), or if incorrect products have been supplied, you must write to tell us within five working days of delivery. You must give us (and any carrier) a fair chance to inspect the damaged Products to determine the extent and cause of any such damage or missing Products.

5. DELIVERY AND RISK: EXPORT

5.1 In these Conditions "incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the, context otherwise requires, any term of expression which is defined in or given a particular meaning by the provisions of incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provision of incoterms and these Conditions the latter shall prevail.

5.2 Where Products are supplied for export from the United Kingdom, the provision of this clause 5 shall (subject to any special terms agreed in writing) apply notwithstanding any other provision of these Conditions.

5.3 You shall be responsible for complying with any legislation or regulations relating to the Products in the country of destination and for the payment of any duties thereon.

5.4 Unless otherwise agreed in writing, the Products shall be delivered EXW the place specified by you.

5.5 You shall be responsible for arranging the testing and inspection of the Products on delivery. We shall have no liability for any claim in respect of any defect in the Products which would be apparent at the time of delivery upon reasonably careful inspection.

6. PAYMENT TERMS

6.1 You are to pay us in cleared funds on delivery, unless you have an approved credit account.

6.2 If you have an approved credit account, payment is due on the last day of the month following the month of our invoice unless otherwise agreed in writing.

6.3 If you fail to pay us in full on the due date:

6.3.1 we may suspend or cancel future deliveries;

6.3.2 we may cancel any discount offered to you;

6.3.3 you must pay us interest at the rate set under s.6 of the Late Payment of Commercial Debts (Interest) Act 1998; (a) calculated (on a daily basis) from the date of our invoice until payment; (b) compounded on the first day of each month; and (c) before and after any judgment (unless a court orders otherwise):

6.3.4 we may claim fixed sum compensation from you under s.5A of that Act to cover our credit control overhead costs; and

6.3.5 you agree that we may recover (under clause 14.1) the cost of taking legal action to make you pay.

6.4 If you have an approved credit account, we may withdraw it or reduce your credit limit or bring forward your due date for payment. We may do any of those at any time without notice.

6.5 You do not have the right to set off any money you may claim from us against anything you may owe us.

6.6 While you owe money to us, we have a lien on any of your property in our possession.

7. TITLE

7.1 Until you pay all debts you may owe us:

7.1.1 all Products supplied by us remain our property;

7.1.2 you must store them separately from any other items you hold and so that they are clearly identifiable as our property;

7.1.3 you must insure all Products (against the risks for which a prudent owner would insure them) and hold the policy on trust for us;

7.1.4 you may use those Products and sell them in the ordinary course of your business, but not if: (a) we revoke that right (by informing you in writing); or (b) you become insolvent.

7.2 If you use, or sell, the Products in the ordinary course of business, as per clause 7.1.4, title shall pass to you immediately before such use, or sale, and shall then transfer to your customer, the end user.

7.3 You must inform us (in writing) immediately if you become insolvent.

7.4 If your right to use and sell the Products ends you must allow us to collect the Products.

7.5 You grant to us permission (and shall ensure that any other party required to give such permission, gives us permission) to enter any premises where the Products may be stored:

7.5.1 at any time, to inspect them; and

7.5.2 after your right to use and sell them has ended, to collect the Products, using reasonable force if necessary.

7.6 Despite our retention of title to the Products, we have the right to take legal proceedings to recover the price of Products supplied should you not pay us by the due date for payment.

7.7 You are not our agent. You have no authority to make any Contract on our behalf or in our name or to pledge our credit.

8. WARRANTIES

8.1 We warrant that, on delivery;

8.1.1 the Products will comply with their description on our Acknowledgement; and

8.1.2 for a period of 12 months after delivery, the Products will be free from material defect, provided that you comply with clause 8.3.

8.2 Unless otherwise agreed, we give you no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the Products or their fitness for any purpose. Specifically the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

8.3 Where the Products benefit from an extended warranty offered by Adey, such extended warranty is solely for the benefit of the ultimate end user and you will not be able to benefit from, or claim under, any such warranty.

8.4 If you believe that we have delivered Products which are defective in materials or workmanship, you must:

8.4.1 inform us (in writing), with full details, as soon as it is reasonably practicable; and

8.4.2 allow us to investigate (we may need access to your premises and product samples).

8.5 Where we attend your premises to investigate a claim under clause 8.3, you must provide our staff with access to a safe, suitable working environment in which to conduct the investigation and any remedial work. If we conclude that the

investigation or work cannot be undertaken in a safe manner we reserve the right to refuse to proceed.

8.6 If after our investigation, we conclude that we have not breached our warranty under clause 8.1 we reserve the right to recover the cost of the investigation and associated expenses from you.

8.7 If the Products are found to be defective in material or workmanship following our investigations, and you have complied with those conditions in clause 8.3 in full, we will at our option replace the Products or refund the price. This will be our sole liability to you in such circumstances. Notwithstanding the foregoing, we will not replace, refund or be liable for any Products which:

8.7.1 have been tampered with or in any way altered, adapted and/or modified other than by us;

8.7.2 have been subject to misuse, negligence or acts other than by us;

8.7.3 have been incorporated into, use with and/or integrated with products not supplied by us, and/or

8.7.4 have been stored, handled, maintained or use in a manner contrary to our instructions, standard industry practice, reasonable practice, or not originally intended.

9. Specification

9.1 If we prepare the Products in accordance with your specifications or instructions:

9.1.1 you must ensure that the specifications or instructions are accurate; and

9.1.2 you must ensure that Products prepared in accordance with those specifications or instructions will be fit for the purpose for which you intend to use them.

9.1.3 you must ensure that our use of your specifications or designs will not result in the infringement of any intellectual property rights of a third party, or in the breach of any applicable law or regulation.

9.2 We reserve the right to make any changes in the specifications of our Products which are necessary to ensure they conform with any applicable safety or other statutory requirements.

9.3 We also reserve the right to make without notice any minor modifications in our specifications we think necessary or desirable.

10. Return of Products and Product Recall

10.1 We will accept the return of non-faulty Products from you only:

10.1.1 by prior arrangement (confirmed in writing and quoting your Sales Return Number (SRN) which can be obtained by calling our Sales Team);

10.1.2 on payment of an agreed handling charge (unless the Products were defective or damaged when delivered, or unless we agree otherwise); and

10.1.3 where the Products are as fit for sale on their return as they were on delivery.

10.2 Subject to clause 10.1, where Products are returned to us they will be subject to a restocking charge of £25 per Product for all items excluding MagnaClean Commercial which has a restocking charge of £250 per Product.

10.3 You shall, at our cost, give any assistance as we may reasonably require to recall Products from the retail or wholesale market.

11. Cancellation

11.1 If the Order is cancelled by you (for any reason) you shall be liable to us for all stock (finished or unfinished) that we may then hold (or to which we are committed) for the Order, together with our reasonable costs incurred in meeting your Order up to the date of cancellation.

11.2 We may suspend or cancel the Order, by written notice if:

11.2.1 you fail to pay us any money when due (under the Order or otherwise);

11.2.2 you become insolvent;

11.2.3 you fail to honour your obligations under these Conditions ie: you are in breach of any of the provisions of these Conditions.

11.3 You may not cancel the Order unless we agree in writing (and clauses 4.2 and 11.1 then apply).

12. Waiver and Remedies

12.1 Any waiver or variation of these Conditions is not binding unless:

12.1.1 made (or recorded) in writing;

12.1.2 signed by a director, partner or proprietor on behalf of each party; and

12.1.3 expressly stating an intention to vary these Conditions.

12.2 All Orders that you place with us will be on these Conditions (or any that we may issue to replace them). By placing an Order with us, you are expressly waiving any printed terms you may have to the extent that they are inconsistent with our terms. Notwithstanding the foregoing and for the avoidance of doubt, these Conditions (and where applicable, any distribution agreement or agency agreement entered between us) shall be the exclusive basis on which any Contracts made between us are transacted and processed unless otherwise agreed in writing by one of our directors or the managers. In the event of any inconsistences between these Conditions and any distribution agreement and/or agency agreement (as the case may be), these Conditions shall prevail.

13. Limitation of Liability

13.1 Except for clause 13.4, we shall not be liable to you by reason of any representation or implied warranty, condition or other term or any duty at common law, or under the express terms of these Conditions, for any consequential loss or damage (whether for loss of profit, loss of goodwill, loss of opportunity or otherwise and whether occasioned by the negligence of us, or our employees or agents or otherwise) arising out of or in connection with any act or omission by us relating to the manufacture or supply of the Products supplied to you, their resale by you or their use by you or any of your customers.

13.2 Subject only to clauses 13.1 and 13.4, our total liability to you (from one single cause) for damage to property caused by our negligence or otherwise shall be limited to £1,000.

13.3 Subject only to clauses 13.1 and 13.4 for all other liability not referred to elsewhere in these Conditions our liability is limited in damages to the price of the Products.

13.4 Unless you notify us that you intend to make a claim under these Conditions within 12 months of the date on which you became, or ought reasonably to have become, aware of the event in respect of which you believe you have a claim against us having occurred, we shall have no liability for that event.

13.5 Nothing in these Conditions restricts or limits our liability for death or personal injury resulting from negligence, or for fraudulent misrepresentation.

13.6 You agree that you will not bring any claim arising out of or in connection with these Conditions against my individual member, partner, employee or consultant of any Adey Group member. Any duty of care which would otherwise, as a matter of law, be owed to you by any of our partners, employees or consultants is excluded from our Contract with you. However, this does not alter or reduce any liability which we may have to you.

13.7 The exclusions and limitation of liability set out in this clause 13 shall be considered severally. The invalidity or unenforceability of any one of these sub-clauses shall not affect the validity or enforceability of any other part of this clause 13.

13.8 The whole of clause 13 shall survive the termination of the relevant Contract and/or these Conditions howsoever caused.

14. Indemnity

14.1 You shall indemnify all members of the Adey Group (jointly and severally) (referred to as the “Indemnified Parties”) 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 any of the Indemnified Parties arising out of or in connection with:

14.1.1 any breach by you of any of your obligations under these Conditions;

14.1.2 the enforcement of any of the Indemnified Parties’ rights under these Conditions; and

14.1.3 breach of your warranty in clause 9.1.3

15. Force Majeure

15.1 If we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our control, we may cancel or suspend any of our obligations to you, without liability.

15.2 Examples of those circumstances include, but are not in any way limited to, acts of God, pandemics, raw material shortages, accident, explosion, war, terrorism, fire, flood, transport delays, strikes and other industrial disputes, and difficulty in obtaining supplies.

16. General

16.1 English law is applicable to any Contract made under these Conditions. The English and Welsh courts have exclusive jurisdiction over any dispute regarding an Order, Contract and/or these Conditions.

16.2 If you are more than one person, each of you has joint and several obligations under these Conditions.

16.3 If any of these Conditions are unenforceable as drafted:

16.3.1 it will not affect the enforceability of any other of these Conditions; and

16.3.2 if it would be enforceable if amended, it will be treated as so amended.

16.4 We may treat you as insolvent if:

16.4.1 you are unable to pay your debts as they fall due; or

16.4.2 you (or any item of your property) become the subject of:

a) any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy);

b) any application or proposal for any formal insolvency procedure; or

c) any application, procedure or proposal overseas with similar effect or purpose.

16.5 All brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any Contract between us and you should not rely on them in entering into any Contract with us.

16.6 Any notice by either of us which is to be served under these Conditions may be served by leaving it at or by delivering it to (by first class post or by fax) the other’s registered office or principal place of business. All such notices must be signed.

16.7 No Contract will create any right enforceable (by virtue of the Contracts (Rights of Third Parties) Act 1999) by any person not identified as the buyer or seller.

16.8 The only statements upon which you may rely in making the Contract with us, are those made in writing by someone who is our authorised representative and restated in the Acknowledgement.

16.9 We may assign the benefit of the Contract without your consent. You may not assign the benefit of the Contract.