M-RACK

CONFIDENCE FROM THE GROUND UP

M-RACK TERMS AND CONDITIONS OF SALE

Agreed Terms

1. About us

1.1 Company details. M-RACK, LTD (company number 16956182) (we, us and our) is a company registered office is at 1 Mortimer Street, Floors 2-3, London, England, W1T 3JA.

1.2 Contacting us. To contact us, please use the contact details stated in our quotation, order acknowledgement, invoice or other written communication. How to give us formal notice is set out in clause 16.

1.3 Contacting you. If we have to contact you we will do so by telephone or by writing to you at the email address you provided to us in your order.

2. Our contract with you

2.1 Our contract. These terms and conditions (Terms) apply to the order by you and supply of goods by us to you (Contract). No other terms are implied by trade, custom, practice or course of dealing.

2.2 Entire agreement. The Contract is the entire agreement between us in relation to its subject matter. You acknowledge that you have not relied on any statement, promise or representation or assurance or warranty that is not set out in the Contract.

2.3 Language. These Terms and the Contract are made only in the English language.

3. Placing an order and its acceptance

3.1 Placing your order. Each order placed by you is an offer to purchase the goods and any related design, engineering, coating, packaging, logistics or ancillary services described in the order, quotation or specification (Goods) subject to these Terms. You are responsible for ensuring that your order, quantities, drawings, site information, project assumptions, delivery requirements and specifications are complete and accurate.

3.2 Quotations and specifications. Any quotation is based on the information made available to us at the time and may be subject to project assumptions, technical clarifications, minimum order quantities, production lot sizes, lead times, material availability and acceptance of any required commercial agreement. Unless expressly stated otherwise in writing, quotations are non-binding until we issue written order acceptance.

3.3 Acknowledging receipt of your order. Any acknowledgement that we have received your order does not mean that we have accepted it. We may review technical feasibility, compliance requirements, credit, delivery terms and project-specific conditions before acceptance.

3.4 Acceptance. Your order is accepted only when we issue a written order acknowledgement, pro forma invoice, order number, dispatch confirmation or other written acceptance, or when we commence manufacture specifically for your order, whichever

occurs first. Each accepted order forms a separate contract. We may accept or reject an order in whole or in part, including where capacity, technical, regulatory, commercial or credit requirements are not met.

3.5 If we cannot accept your order. If we are unable or unwilling to accept your order, we will notify you. If you have already paid sums for Goods that we do not accept, we will refund those sums to the extent not applied to non-cancellable costs, committed materials or work already carried out for your order, unless the non-acceptance is due solely to our default.

3.6 Commercial Agreement. In the case of large or complex orders, we may request that you enter into a further commercial agreement with us (Commercial Agreement). The Commercial Agreement will give further detail for large or complex orders. If there is any conflict between these terms and conditions and a Commercial Agreement, the terms of the Commercial Agreement shall prevail.

3.7 Concluded Contract. You can log in to our portal at any time to review your online order history as well as view quotations, invoices, credit notes and statements once it's created. Until that time, please contact your representative to ascertain that information.

4. Our goods

4.1 The images of the goods available for purchase on our site are for illustrative purposes only.

4.2 Your Goods may vary from those shown on images on our site.

4.3 You must make sure you have all necessary permissions before you ask us to supply Goods to your specification. If we breach someone else's intellectual property right (such as copyright, patents, trademarks or rights in design) because of our use of your specification, we will hold you responsible. You agree that you will indemnify us for all costs and compensation a court orders to pay or that we have to pay to settle a claim.

4.4 We reserve the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirement.

5. Return and refund

5.1 No general right to cancel. Because the Goods are commonly made to project requirements, sourced to order, or allocated from limited production capacity, you may not cancel an accepted order except with our prior written agreement.

5.2 Cancellation charges. If we agree to a cancellation, you must pay all losses, costs and liabilities reasonably incurred by us arising from that cancellation, including committed raw materials, components, packaging, design and engineering time, manufacturing time, storage, administration, logistics bookings, third-party cancellation charges and any finished goods or work in progress that cannot reasonably be reallocated or mitigated.

5.3 No return for convenience. We do not accept returns due to change of mind, over-ordering, customer preference, project delay, funding delay, cancellation, site readiness issues, or any reason not caused by our proven breach of contract or a verified defect covered by clause 6.

5.4 Returns procedure. No Goods may be returned without our prior written authorisation. Any authorised return must comply with our return instructions, including packaging, identification, traceability and timing requirements. You are responsible for all return transport, handling and inspection costs unless we confirm in writing that the return is due solely to a verified defect for which we are responsible under clause 6.

5.5 Credits and refunds. Any credit note or refund approved by us will be limited to the contract price actually paid for the affected Goods, less any applicable deductions, and will be issued only after inspection, verification and completion of the agreed returns process.

6. Defective Products Warranty

6.1 Claims contact. Any quality complaint, shortage claim, transit damage report, warranty query or return request must be notified to us in writing with full supporting information, including order reference, delivery details, photographs, batch or lot details where available, installation details and a description of the alleged issue.

6.2 Territory and local compliance. Unless expressly agreed otherwise in writing, the Goods are supplied only for the territory and application stated in our quotation or order acknowledgement. You are solely responsible for identifying and notifying us before order acceptance of all country-specific technical, certification, labelling, packaging, permitting, tax, import, trade compliance and project-specific requirements for the destination country and site.

6.3 Limited product warranty. Subject always to the remaining provisions of these Terms, we warrant that the Goods will on delivery materially conform to the agreed specification and be free from material defects in design, materials and workmanship. Any extended performance, structural or corrosion warranty only applies if expressly stated in our quotation or project documents and then only subject to the conditions, assumptions, exclusions and claim procedures stated in those documents.

(a) subject to clause 4, conform with their description;

(b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

(c) be fit for any purpose held out by us.

6.4 Conditions to any warranty claim. Any claim under clause 6.3 is conditional on you notifying us promptly in writing, ceasing non-essential use of the affected Goods where reasonably required, preserving evidence, giving us a reasonable opportunity to inspect, and complying with all storage, handling, installation, commissioning, operation and maintenance instructions and any applicable claims or returns procedure.

(a) you give us 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 6.3;

(b) we are given a reasonable opportunity of examining the Goods; and

(c) we ask you to do so, you return the Goods to us at your cost,

Our sole and exclusive obligation, and your sole and exclusive remedy, for any valid claim relating to the Goods shall be, at our option, repair, replacement, reperformance, a credit note, or refund of the price actually paid for the affected Goods.

6.5 Warranty claims process. Where the relevant issue concerns manufacturing quality, material defects, structural performance, corrosion performance or another matter covered by clause 6, you must follow the troubleshooting, inspection, evidence and return process we specify. Our obligations are limited to those expressly set out in these Terms.

6.6 Exclusions. We are not liable for any warranty or defect claim to the extent that it arises from:

(a) your design, drawings, static assumptions, site data, geotechnical data, project-specific requirements or instructions are incomplete, inaccurate or change after quotation or order acceptance;

(b) the Goods are stored, transported, handled, installed, commissioned, modified, repaired, maintained or used incorrectly or contrary to our instructions or good industry practice;

(c) the issue arises from foundations, structures, civil works, site conditions, third-party products, third-party design, incompatibility, misuse, neglect, fair wear and tear, corrosion outside the specified environment, overloading, weather outside design parameters, or events occurring after risk passes to you;

(d) the Goods have been altered or repaired without our prior written consent;

(e) the alleged non-conformity arises from compliance changes required by law, regulation, standards or competent authorities after quotation or order acceptance; or

(f) the claim is not notified within the applicable inspection, rejection or warranty notification period stated in these Terms or in the applicable project documents.

We will only be liable to you for the Goods' failure to comply with the warranty set out in clause 6.3 to the extent set out in this clause 6.

6.7 Except as expressly stated in these Terms, we do not give any representations, warranties or undertakings in relation to the Goods. Any representation, condition or warranty which might be implied or incorporated into these Terms by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, we will not be responsible for ensuring that the Goods are suitable for your purposes.

6.8 These Terms also apply to any repaired or replacement Goods supplied by us to you.

6.9 These Terms also apply to any repaired or replacement Goods supplied by us to you.

7. Delivery, transfer of risk and title

7.1 Delivery dates. Any delivery date or lead time is an estimate unless expressly agreed in writing as binding. Delivery dates are dependent on timely receipt of all required technical information, approvals, customer actions, deposits, staged payments, security, and any customer-supplied items or information. We may deliver in instalments, and each instalment may be invoiced separately.

7.2 Delivery, inspection and risk. Delivery occurs and risk passes in accordance with the Incoterms, delivery point or dispatch arrangement stated in our quotation or order acknowledgement. If no specific delivery term is stated, delivery occurs when the Goods are made available for collection or loaded for dispatch at the agreed point. You must inspect the Goods promptly on delivery and notify any visible shortage, damage or non-conformity within five Business Days of delivery. The Goods are deemed accepted unless rejected within the applicable period under clause 6.

7.3 Title and retention of title. Both you and we agree that:

(a) Title to the Goods does not pass to you until we have received in cleared funds payment in full of all sums due to us under the relevant contract and all other amounts due from you to us on any account. Until title passes, you must store the Goods separately where practicable, keep them identifiable as our property, not remove or alter any identifying marks, keep them insured for their full replacement value, and allow us to enter premises where the Goods are stored to recover them if you are in default;

(b) you may resell the Goods in the ordinary course of your business before title has passed to you, provided that any such sale is made on your own behalf and not as our agent. By way of security for all sums due to us, you assign to us all rights and claims arising from

any resale of the Goods, up to the amount owed to us in respect of the Goods and any other sums due from you to us. You may continue to collect those claims unless you are in default of payment, suspend payment, become subject to any insolvency process, or we reasonably consider that our ability to recover the sums due to us is prejudiced. In those circumstances, we may require you to notify us of the relevant claims and debtors, provide all information and documents reasonably required to collect them, and notify the relevant debtors of the assignment;

(c) if, before title passes, the Goods are processed, incorporated, mixed or combined with other goods or property, this will be treated as having been done on our behalf. We will acquire ownership, or where applicable co-ownership, of the resulting goods or property in the proportion that the value of the Goods bears to the value of the other goods or property at the time of processing, incorporation, mixing or combination. You must hold any such resulting goods or property on our behalf and keep them identifiable so far as reasonably practicable; and

(d) where any security granted to us under this clause exceeds the amount owed to us by more than 10%, we will, at your written request, release such part of that security as we reasonably select.

7.4 If we fail to deliver the Goods, our liability is limited to the cost of obtaining replacement goods of a similar description and quality in the cheapest market available, less the price of the Goods. However, we will not be liable to the extent that any failure to deliver was caused by an **Event Outside Our Control**, or because you failed to provide adequate delivery instructions or any other instructions that are relevant to the supply of goods.

7.5 Once you own the Goods, you shall, where applicable, be responsible for financing the collection, treatment, recovery and environmentally friendly disposal of all Goods subject to the Waste Electrical and Electronic Equipment Regulations 2012 ("WEEE") and complying with any other relevant legislation in force at the time.

8. No international delivery

8.1 International and export supply. We may supply domestically or internationally only where expressly agreed in writing. You are responsible for all destination-country import requirements, local taxes, customs formalities, permits, product approvals, site access arrangements and any requirements not expressly included in our quotation.

8.2 Trade and border costs. Unless we expressly agree otherwise in writing, all freight, insurance, customs duties, import taxes, brokerage fees, CBAM-related costs, compliance costs and any other post-export or destination-country charges are for your account and may be invoiced by us as pass-through items if incurred by us on your behalf.

9. Price of goods and delivery charges

9.1 Project pricing. Prices are as stated in our quotation, order acknowledgement, pro forma invoice or other written commercial document for the relevant project or order. Unless expressly stated otherwise, no general price list applies and all prices are project-specific.

9.2 Price assumptions and changes. Any price is based on the assumptions, specification, quantities, delivery profile, materials, coatings, packaging, Incoterms, exchange rates, taxes, duties and cost drivers applicable at the time of quotation. We may revise prices before order acceptance and, after acceptance, where the contract, quotation or project documents expressly allow for adjustment, including for changes in specification, scope, quantity, timing, raw materials, energy, labour, freight, exchange rates, regulation, customs, taxes, CBAM or other compliance costs.

9.3 Taxes and pass-through charges. Prices are exclusive of VAT and any equivalent sales, use, import or other taxes, as well as freight, insurance, customs duties, clearance charges, non-standard packaging, site-specific costs and all other pass-through items unless expressly included in writing. You must pay all such amounts in addition to the price.

9.4 Incoterms and logistics. Unless otherwise stated in writing for a specific order, delivery terms are the Incoterms stated in our quotation or order acknowledgement. If no Incoterms are stated, our responsibility ends at the agreed dispatch or collection point. Any delivery or logistics services arranged by us are provided on your behalf and at your cost unless expressly included in writing.

9.5 Obvious errors. We may correct any typographical, clerical, pricing, technical or other obvious error in any quotation, acceptance, invoice or document, provided we notify you as soon as reasonably practicable. If such an error materially affects the commercial basis of the order, we may withdraw or revise the affected quotation or acceptance.

10 Credit Accounts and Payment

10.1 Payment structure. Unless otherwise agreed in writing, payment is due in stages against our pro forma invoices or invoices in accordance with the payment schedule set out in clause 9.2. The applicable structure depends on whether the order is project-based, pre-procurement, the size of the project, whether credit or security support is in place, and any project-specific commercial agreement.

Order type	Stage 1	Stage 2	Stage 3	Stage 4 / balance
Project-based order above 20MW	30% advance payment on order acceptance and before material procurement	30% pre-payment four weeks after the advance payment	15% before dispatch or release for shipment	25% due 60 days from delivery date
Project-based order of 20MW or below	30% advance payment on order acceptance and before material procurement	30% pre-payment on production start date	—	40% due 30 days from delivery date
Preprocurement / stock-purpose order	35% advance payment on order date	35% pre-payment four weeks after order date	—	30% due 45 days from delivery date
No approved credit support or where we require additional security	As above	As above	Balance or any stated before dispatch payment must be paid before shipment, collection or release	Any remaining balance as stated in writing

For the purposes of this payment schedule, the delivery date is the date on which delivery occurs under clause 7, whether or not inspection or acceptance takes place later. If any project-specific commercial agreement, quotation or order acknowledgement states a different staged structure, that agreed structure will apply for that order.

10.2 Deposits and advance payments. We may require deposits or advance payments before procurement, design release, production allocation, manufacture or dispatch. Any such payment may be used by us to procure raw materials, components, packaging and production capacity for your order and is non-refundable except to the extent we expressly agree otherwise or fail to supply due solely to our unremedied breach. Where materials are purchased, allocated or hedged against your order, we may invoice those materials separately if the order is delayed, suspended or not called off within the agreed period.

10.3 Credit and security. Any credit terms are entirely at our discretion and may be withdrawn, reduced, varied or made conditional on guarantees, security, credit insurance, letters of credit, parent support, insurance or other protections. We may require payment in full before manufacture or dispatch if we reasonably consider your credit risk has increased. If no bank guarantee, credit insurance support or other security acceptable to us is in place, any balance that would otherwise fall due after delivery may instead be required in full before shipment, collection or release.

10.4 Invoice due dates. Invoices must be paid in full without deduction, withholding, set-off or counterclaim unless required by law or expressly agreed by us in writing. We may invoice at any milestone stated in the contract documents, including on order acceptance, procurement, commencement of manufacture, dispatch, delivery, deemed acceptance or any agreed payment date. Unless we expressly agree otherwise in writing, any balance stated in the payment schedule as falling due after delivery runs from the delivery date and is not deferred by inspection, commissioning, site readiness, customer acceptance, end-customer payment, project energisation or any dispute not relating to the invoiced milestone.

10.5 Failure to pay. If you fail to pay any sum when due, we may suspend quotations, design work, procurement, manufacture, deliveries, warranty processing and all other performance until payment is made. We may also reallocate stock or capacity reserved for you, revoke any price hold, require full prepayment for existing or future orders, invoice committed materials immediately, and recover any storage, demurrage, delay, handling or rebooking costs caused by the late payment or resulting delivery delay.

10.6 Method and currency of payment. Payment must be made in the currency stated in our invoice or quotation to the bank account nominated by us in writing. You are responsible for all bank charges, transfer fees and any shortfall caused by intermediary banks, deductions or exchange conversion.

10.7 Allocation of payments. We may apply any payment received from you to any invoice, debt or liability owed by you or any affiliated entity, in any order we choose.

10.8 Interest and recovery costs. If you do not make any payment due to us by the due date, we may charge interest on the overdue amount at 4% per annum above the Bank of England base rate from time to time, accruing daily from the due date until actual payment, whether before or after judgment. You must also reimburse our reasonable costs of recovery, including legal and debt collection costs.

10.9 No withholding for disputes. If you dispute part of an invoice, you must notify us promptly with full details and still pay the undisputed amount when due. A dispute does not entitle you to delay or withhold payment of any undisputed amount.

10.10 Cash-flow protection. We are entitled to structure quotations, call-offs, batch releases, dispatch dates and production allocation so that sums received from you are sufficient to cover committed material, manufacturing, logistics and credit exposure on the relevant order. We are not obliged to continue manufacture, reserve capacity or release Goods where doing so would leave us negatively cash-funded on that order.

11. Product warranty

11.1 Any specific product warranty, performance warranty, structural warranty or corrosion

warranty offered by us is subject to the terms, exclusions, claim procedures and maintenance requirements stated in our quotation, technical documents, warranty statement or other written contract document. We do not assume any obligations beyond those expressly stated in those documents and these Terms.

12. Our liability: your attention is particularly drawn to this clause

12.1 Scope of liability. References to liability in this clause include liability in contract, tort (including negligence), misrepresentation, restitution, breach of statutory duty and otherwise arising out of or in connection with the contract, the Goods or any services.

12.2 Non-excludable liability. Nothing in these Terms excludes or limits liability that cannot lawfully be excluded or limited, including liability for fraud or fraudulent misrepresentation and liability for death or personal injury caused by negligence to the extent such liability cannot lawfully be excluded.

(a) death or personal injury caused by our negligence;
(b) fraud or fraudulent misrepresentation;
(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
(d) any other liability that cannot be limited or excluded by law.

12.3 Excluded losses. Subject to clause 12.2, we are not liable for any loss of profit, loss of revenue, loss of sales, loss of business, loss of opportunity, loss of anticipated savings, loss of goodwill, loss of reputation, financing costs, project delay costs, loss of use, loss of generation, increased procurement cost, liquidated damages owed by you to third parties, or any indirect, consequential, special or punitive loss or damage.

(a) any loss of profits, sales, business, or revenue; or
(b) loss of business opportunity; or
(c) loss of anticipated savings; or
(d) loss of goodwill; or
(e) any indirect or consequential loss.

12.4 Liability cap. Subject to clause 12.2, our total aggregate liability arising out of or in connection with any contract shall not exceed the sums actually paid by you to us for the specific affected Goods giving rise to the claim. All claims arising from the same event or series of connected events shall be treated as one claim.

12.5 Customer indemnity. You shall indemnify us against all losses, liabilities, claims, damages, costs and expenses arising from or in connection with your specifications, drawings, branding, labels, instructions, site data, use of the Goods, installation method, project design, marketing claims, breach of law, breach of contract, or any claim by your customer or other third party to the extent not caused solely by our breach of these Terms.

13. Data Protection

13.1 We and you shall comply with the terms of the data protection addendum set out at www.m-rack.co.uk.

14. Termination

14.1 Our termination and suspension rights. Without limiting any other right or remedy, we may suspend performance, refuse to accept further orders, accelerate payment, cancel reserved stock or capacity, terminate any contract or terminate all contracts with immediate effect by written notice if you fail to pay any amount when due, breach these Terms, fail to provide agreed security, become insolvent, your financial position deteriorates, or we reasonably believe continuing performance would expose us to material credit, compliance, sanctions, legal or operational risk.

(a) you commit a material breach of any term of the Contract;
(b) you fail to pay any amount due under the Contract on the due date for payment;
(c) you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business; or
(d) your financial position deteriorates to such an extent that in our reasonable opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy.

14.2 Effect of termination. Termination or suspension does not affect accrued rights, any right to recover sums due, or any provision intended to survive. On termination, all outstanding sums become immediately due and payable, and we may recover Goods in which title has not passed.

14.3 Committed materials and work in progress. If any contract is cancelled, suspended or terminated for a reason not caused solely by our unremedied breach, you must pay for all finished Goods, work in progress, committed materials, non-cancellable supplier commitments, design and engineering work, packaging, storage and other costs reasonably incurred by us in connection with the affected order.

15. Events outside our control

15.1 Force majeure. We are not liable for any failure or delay in performance caused by circumstances beyond our reasonable control, including (i) war, civil war, riot, rebellion and revolution, military or other seizure of power, acts of terrorism, sabotage or piracy and cyber attacks; (ii) currency and trade restrictions, embargo, sanctions; (iii) lawful or unlawful official acts, compliance with laws or government orders, expropriation, confiscation, temporary or permanent closure of manufacturing facilities, (iv) epidemic, pandemic, natural disaster or extreme natural event; (v) explosion, fire, prolonged breakdown of means of transport, telecommunications, information systems or energy; (vi) general industrial unrest such as boycott, strike and lockout, occupation of factories and buildings) (vii) shortage or price escalation of raw materials; (viii) labour shortages, (ix) transport disruption **(Event Outside Our Control).**

15.2 Consequences of force majeure. During any force majeure event our obligations are suspended to the extent affected and delivery dates are extended accordingly. If the event continues for a prolonged period, we may cancel the affected order or part of it without liability other than refunding sums paid for undelivered Goods less non-cancellable costs reasonably incurred by us.

(a) we will contact you as soon as reasonably possible to notify you; and
(b) our obligations under the Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects our delivery of Goods to you, we will arrange a new delivery date with you after the Event Outside Our Control is over.

15.3 No wider compensation. Except as expressly stated in these Terms, you are not entitled to compensation, damages, penalties, delay costs or cancellation rights arising from a force majeure event or upstream supply disruption.

16. Communications between us

16.1 When we refer to “in writing” in these Terms, this includes email.

16.2 Any notice given under or in connection with the Contract must be in writing and be delivered by hand, sent by pre-paid first class post or next working day delivery service, or email.

16.3 A notice is deemed to have been received:

(a) if delivered by hand, at the time the notice is left at the proper registered address;
(b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; or
(c) if sent by email, at 9.00 am the next working day after transmission.

16.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

17. General

17.1 Non-Solicitation. During the supply of the Goods and for a period of twelve (12) months following completion of the relevant order, you must not, without our prior written consent, directly or indirectly solicit, recruit, entice away or seek to employ or engage any person who is employed or engaged by us and who has been involved in the performance of the relevant Contract. For the purposes of this clause, references to our employees include employees and workers of any of our affiliated companies or group undertakings. Nothing in this clause prevents you from hiring any person who responds to a general recruitment campaign or advertisement not specifically targeted at any such employee, worker or contractor, provided that you have not otherwise breached this clause.

17.2 Assignment and transfer.

(a) We may assign or transfer our rights and obligations under the Contract to another entity but will always notify you by posting on this webpage if this happens.
(b) you may only assign or transfer your rights or your obligations under the Contract to another person if we agree in writing.

17.3 Variation. Any variation of the Contract only has effect if it is in writing and signed by you and us (or our respective authorised representatives).

17.4 Waiver. If we do not insist that you perform any of your obligations under the Contract, or if we do not exercise our rights or remedies against you, or if we delay in doing so, that will not mean that we have waived our rights or remedies against you or that you do not have to comply with those obligations. If we do waive any rights or remedies, we will only do so in writing, and that will not mean that we will automatically waive any right or remedy related to any later default by you.

17.5 Severance. Each paragraph of these Terms operates separately. If any court or relevant authority decides that any of them is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

17.6 Third party rights. The Contract is between you and us. No other person has any rights to enforce any of its terms.

17.7 Governing law and jurisdiction. The contract and any dispute or claim arising out of or in connection with it are governed by English law and the courts of England and Wales shall have exclusive jurisdiction, unless we elect to bring proceedings in any other court of competent jurisdiction.