



## Terms and Conditions of Chair Loan

**These terms and conditions set out the terms on which Chunc agrees to loan the wheelchair described in the Loan Agreement Details to you, the Customer (the "Terms of Chair Loan").**

**Please read these Terms of Chair Loan carefully before placing your order (thereby agreeing to enter into a contract with us on these terms).**

**An order can be placed by phone or by email.**

**By placing an order you confirm you have read and agree to the Terms of Chair Loan.**

**Where we confirm your order, the Loan Agreement shall be a binding contract between us and shall determine the terms on which we permit the Chair Loan.**

**Your attention is particularly drawn to condition 3 and condition 9 detailing the limitations on our liability.**

### 1. DEFINITIONS

1.1 The following definitions apply in these Terms of Chair Loan:

<b>"Business Day"</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
<b>"Chair"</b>	the chair whose details are noted in the Loan Agreement Details;
<b>"Chair Loan"</b>	the loan of the Chair by Chunc to the Customer and subject to the Loan Agreement;
<b>"Chair Manual"</b>	the Chunc user manual for the Chair;
<b>"Chair User"</b>	the person who shall be using the Chair as set out in the Loan Agreement Details;
<b>"Chair User's Representative"</b>	the parent, guardian or appointed carer of the Chair User as set out in the Loan Agreement Details;
<b>"Customer"</b>	the person or organisation noted as the customer as set out in the Loan Agreement Details;
<b>"Data Protection Legislation"</b>	the relevant UK Data Protection Legislation and any other applicable European Union legislation relating to personal data including the General Data Protection Regulation ((EU) 2016/679) and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data;



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<b>“Delivery Address”</b>	the address stated as to where the Chair is to be delivered in the Loan Agreement Details;
<b>“Intellectual Property Rights”</b>	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;
<b>“Intended Chair Delivery Date”</b>	the date marked as such on the Loan Agreement Details;
<b>“Loan Agreement”</b>	the contract between Chunc and the Customer for the Chair Loan in accordance with the Loan Agreement Details, these Terms of Chair Loan and any Schedules;
<b>“Loan Charge”</b>	the charge payable by the Customer to Chunc for the Chair Loan, as set out in the Loan Agreement Details;
<b>“Loan Period”</b>	the time period of the Chair Loan as set out in the Loan Agreement Details;
<b>“Personal Data”</b>	as defined in the Data Protection Legislation;
<b>“UK Data Protection Legislation”</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and
<b>“Terms of Chair Loan”</b>	these terms and conditions set out in condition 1 (Interpretation) to condition 11 (General) (inclusive);

### 1.2 Interpretation:

- 1.2.1 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that legislation or legislative provision.



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- 1.2.2 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.3 A reference to writing or written includes email.

### 2. LOAN AGREEMENT COMMENCEMENT AND TERM

- 2.1 The Loan Agreement shall commence on the date when we confirm your order and shall continue until Chunc has taken receipt of the Chair either at the end of the Loan Period or earlier, in accordance with its terms.

### 3. TERMS OF CHAIR LOAN

#### Ownership of the Chair

- 3.1 The Chair remains the property of Chunc at all times and is supplied for the Chair User to use during the Loan Period only unless otherwise agreed in writing with Chunc.

#### Responsibility for the Chair

- 3.2 The Customer is responsible for the Chair from the commencement of the Loan Period until such time as Chunc confirms receipt of the Chair being returned to its address on the Loan Agreement Details.
- 3.3 All risk of loss, theft, damage or destruction of the Chair passes to the Customer as soon as delivery of the Chair has been taken.

#### Permitted use of the Chair

- 3.4 Only the Chair User is permitted to use the Chair and the Customer must ensure that no person other than the Chair User uses the Chair.
- 3.5 The Chair is to be used only for the purpose for which it is designed.
- 3.6 The Chair is for use only when the Chair User is secured using the fitted seat belt.
- 3.7 The Chair must be used at all times in accordance with the Chair Manual.
- 3.8 In the event of any damage or defect to the Chair, the Chair is not to be used until it has been repaired or replaced by Chunc.



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### Storage of the Chair

- 3.9 The Customer is required to ensure that the Chair is kept in a suitable and secure environment during the Loan Period.
- 3.10 The Chair must be kept and stored at all times in accordance with the Chair Manual.
- 3.11 If the Chair is to be stored at an address other than the address of the Customer, the Chair User, or the Chair User's parent or legal guardian's address detailed on the Loan Agreement Details, Chunc must be informed of such change of address within 2 Business Days of the change.

### Maintenance of the Chair

- 3.12 The Chair must be kept, used and stored in accordance with these Terms of Chair Loan, the Chair Manual and any guidance, documents, instructions provided by Chunc. Any failure to do so may be considered a material breach of the Loan Agreement and Chunc shall be entitled to terminate the Loan Agreement immediately without further notice and require that the Chair is returned to Chunc immediately.
- 3.13 The Customer is required to ensure the Chair is maintained to the same operating condition as when it was delivered by Chunc.
- 3.14 The Chair must be checked to be in good and safe working condition each time before use.
- 3.15 The battery of the Chair is to be regularly kept charged.
- 3.16 The tyres of the Chair are to be kept well-inflated. In the event of a puncture, Chunc must be informed immediately and the Chair should not be used until it has been repaired or replaced by Chunc.
- 3.17 Any tools or equipment provided with the Chair on delivery or provided during the Loan Period, must be used in accordance with instructions, documents, demonstrations and guidance given by Chunc.
- 3.18 In the event of theft, defect, damage or any problem with the Chair during the Loan Period, the Customer, Chair User, or parent/legal guardian of the Chair User noted on the Loan Agreement Details is required to inform Chunc immediately by telephone or in writing to ensure that Chunc can take appropriate action to repair or replace the Chair. The Chair is not to be used until it has been repaired or replaced by Chunc. Where possible Chunc will repair a Chair within 7 Business Days of receipt of the notification.



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- 3.19 No repair of or modification to the Chair is to be carried out by anyone other than Chunc, or a representative of Chunc, without the express permission of Chunc.
- 3.20 No Chair, nor any of its parts, are to be disposed of.

### Transportation of the Chair

- 3.21 Chunc wheelchairs have been crash tested in accordance with ISO 7176-19, however the nature of a crash test is that it can only test a Chunc wheelchair in a limited number of fictitious scenarios in a simulated setting and it is therefore not possible to test a Chunc wheelchair in all possible road traffic or collision situations. Crash testing is also only carried out with the user seated in an upright position with both knees in a 90 degree angle (rather than an angle greater than 90 degrees or a horizontal position). There is no standard to test a chair to in the reclined flat position.
- 3.22 Chunc cannot accept any liability for any injury sustained when travelling in a Chunc wheelchair and any such use shall be entirely at the Chair User's and Customer's risk.
- 3.23 When the Chair is being transported with the Chair User in it:
- 3.23.1 it should be done so in accordance with the Chair Manual;
  - 3.23.2 a suitable wheelchair tie-down system and personal restraint system in accordance with ISO 7176 must be used;
  - 3.23.3 the Chair and Chair User should travel in a secured position in the direction of travel i.e. a forward facing position however, if the chair is reclined to the horizontal position, look at the possibility of turning the chair, so that it is in the rearward facing position (similar to a child's car seat). This will lower the risk of the patient slipping forward in the event of an accident;
  - 3.23.4 all removable, add-on, loose or non-secure components and parts such as crutches, cushions and tables (this list is not exhaustive) should be removed and stowed safely;
  - 3.23.5 the wheel locks of the Chair must be applied and checked to ensure they are properly engaged;
  - 3.23.6 the Chair headrest must be fitted and positioned correctly; and
  - 3.23.7 no alteration or substitution should be made to the Chair's securement points or to components of the chassis or frame without consulting Chunc.



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For the avoidance of doubt the suggestions in this condition 3.23 are for guidance purposes only and Chunc accepts no liability in respect of the performance of the Chair in relation to them.

- 3.24 Due to the great number of systems on the market, it is not possible for Chunc to crash test each Chunc wheelchair with all wheelchair tie-down systems and personal restraint systems. It is therefore the Customer's and the parent's or legal guardian's of the Chair User (if not the Customer) responsibility to ensure that any tie-down and restraint system used meets the required standards and is being used with the manufacturer's recommendations.
- 3.25 In the event that the Chair or any Chunc wheelchair be involved in an accident or impact it should not be used again until it has been inspected by one of our specialist staff.

### **Please ensure you read the following in respect of liability:**

- 3.26 Chunc bears no liability in respect of the performance of the Chair or any Chunc with any tie-down and restraint system.
- 3.27 In the event that the Chair is, directly or indirectly, damaged due to any breach of condition 3, Chunc shall bear no responsibility and accepts no liability for the Chair's use and the Customer shall bear the cost of repairing any further damage and any arising cost of repair or replacement.
- 3.28 Any failure to keep the Chair in accordance with this condition 3 shall be considered a material breach of the terms of the Loan Agreement and Chunc is entitled to terminate this Loan Agreement immediately without further notice and require that the Customer return the Chair to Chunc immediately.

## **4. UPDATING CHUNC OF YOUR CONTACT DETAILS AND LOCATION OF THE CHAIR**

The Customer and the parent or legal guardian of the Chair User (if not the Customer) is required to inform Chunc in writing of any change to their contact details noted on the Loan Agreement Details within two Business Days of such change.

## **5. DELIVERY OF THE CHAIR**

- 5.1 Chunc shall deliver the Chair to the Delivery Address during business hours on the Intended Delivery Date. In the event that it is not possible, for whatever reason, for Chunc to deliver the Chair to the Delivery Address on the Intended Delivery Date, it shall endeavour to try to deliver the Chair within 5 Business Days. Time shall not be of the essence to the Loan Agreement.
- 5.2 The Customer must ensure there is adequate access at the Delivery Address to enable Chunc to deliver the Chair safely.



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- 5.3 Chunc request that the Customer arrange for the designated physiotherapist or registered health professional of the Chair User be in attendance at the Delivery Address when the Chair is delivered and on the Chair User's first use of the Chair. Any medical advice relating to the fitting of the chair remains for the Chair User's health practitioners to provide and is in no way the responsibility of Chunc.
- 5.4 Chunc may, at its discretion, require signature of a delivery note acknowledging receipt and delivery of the Chair to the Delivery Address.
- 5.5 Delivery will be deemed to be complete on receipt of the Chair by the Customer or the parent/legal guardian of the Chair User (if not the Customer) at the Delivery Address.

### 6. RETURN OF THE CHAIR

- 6.1 By the end of the Loan Period the Chair must either:
- 6.1.1 have been returned to, and received by, Chunc or;
  - 6.1.2 have been collected from the Delivery Address (or other such address as agreed in writing) by a representative of Chunc.
- 6.2 The Customer is required to inform Chunc in writing of the intended means of return of the Chair within 5 Business Days prior to the end of the Loan Period.
- 6.3 In the event that the Chair is to be returned by a third-party to Chunc, the Chair shall remain the responsibility of the Customer during such transit and shall only be deemed to be returned to Chunc on Chunc receiving physical possession of the Chair. The Customer must ensure any third-party used is reputable and capable of returning the Chair in a safe and secure manner and in good condition in accordance with this condition 6.
- 6.4 The Chair must be returned to Chunc in a good, clean and usable working condition without damage, defect, unauthorised alteration or missing parts.
- 6.5 Chunc reserves the right to charge, entirely at its discretion, the Customer a fee in the event that the Chair is not returned in accordance with the Chair Loan Terms.
- 6.6 All user manuals, guidance notes and tools provided by Chunc at the commencement of, or during, the Loan Period must be returned in a clean and usable condition at the end of the Loan Period. Failure to do so may result in a charge to the Customer of £50.00 (or such other sum as Chunc determines appropriate) to cover the cost to Chunc of their replacement.



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6.7 In the event that the Chair is not received back by Chunc in accordance with these Chair Loan Terms, Chunc reserves the right to require the Customer to make additional payments in respect of any late return of the Chair, repairs or replacement costs.

### 7. DATA PROTECTION

Chunc will use Personal Data to perform its obligations under the Loan Agreement and to contact the Customer or the Chair User's parent or legal guardian (if not the Customer) to discuss the Loan Agreement and/or the Chair. All Chunc's use of Personal Data will be in accordance with its data protection obligations as set out in the Data Protection Legislation.

### 8. INTELLECTUAL PROPERTY

All Intellectual Property Rights in the Chair belongs to Chunc.

### 9. CHARGES AND PAYMENT

9.1 In consideration for the provision of the Chair Loan, the Customer shall pay Chunc the Loan Charges in accordance with this condition 8.

9.2 All amounts payable by the Customer exclude amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to Chunc at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

9.3 Chunc shall submit an invoice for the Loan Charges plus VAT (if applicable) to the Customer prior to, or on commencement of, the Loan Period.

9.4 The Customer shall pay all invoices due and submitted to it by Chunc:

9.4.1 within 14 days of the date of the invoice; and

9.4.2 to a bank account nominated in writing by Chunc,

unless otherwise agreed in writing with us.

9.5 If the Customer fails to make any payment due to Chunc under the Loan Agreement by the due date for payment, then, without limiting Chunc's remedies under condition 10 (Termination):

9.5.1 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 condition will accrue each day at 4% a





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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%.

9.5.2 Chunc may suspend the provision of the Chair Loan and require the return of the Chair until payment has been made in full.

9.6 All amounts due under the Loan Agreement from the Customer to Chunc shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax (as required by law)).

### 10. LIMITATION OF LIABILITY

10.1 This condition sets out the entire financial liability of Chunc (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer, the Chair User or their parent or legal guardian:

10.1.1 arising under or in connection with the Loan Agreement;

10.1.2 in respect of any use made in respect of the Chair, our guidance, documents, services or any part of them; and

10.1.3 in respect of any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Loan Agreement.

10.2 Chunc shall not be liable for any accident or injury or damage or loss whether arising directly or indirectly in the event of:

10.2.1 the Chair being used by someone other than the Chair User;

10.2.2 a breach of, or failure or omission to act in accordance with, condition 3.

10.3 Except as expressly and specifically provided for in the Loan Agreement:

10.3.1 the Customer shall assume sole responsibility for results obtained from the use of the Chair, Chunc's products or services by the Customer, its employees, representatives and agents, the Chair User and their parent(s) or legal guardian(s), and for conclusions drawn from such use;

10.3.2 Chunc shall have no liability for any damage caused by errors or omissions in any information provided to Chunc by the Customer, its employees, representatives and agents, the Chair User and their parent(s) or legal guardian(s) in connection with the Chair or any other Chunc product and service; and



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- 10.3.3 all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Loan Agreement.
- 10.4 Nothing in the Loan Agreement limits Chunc's liability for:
- 10.4.1 death or personal injury caused by Chunc's negligence; or
- 10.4.2 for fraud or fraudulent misrepresentation.
- 10.5 Subject to conditions 9.4 and 9.6, Chunc shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty howsoever arising) contract, misrepresentation (whether innocent or negligent) or otherwise for any loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill and/or similar losses, or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising under the Loan Agreement.
- 10.6 Chunc's total aggregate liability in contract, tort (including negligence or breach of statutory duty however arising), misrepresentation (whether innocence or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Loan Agreement shall be limited to the Loan Charges.
- 10.7 Chunc shall bear no liability in respect of the types of loss that are wholly excluded:
- 10.7.1 loss of profits;
- 10.7.2 loss of sales or business;
- 10.7.3 loss of agreements or contracts;
- 10.7.4 loss of anticipated savings;
- 10.7.5 loss of use or corruption of software, data or information;
- 10.7.6 loss of or damage to goodwill; and
- 10.7.7 indirect or consequential loss.
- 10.8 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Loan Agreement.



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### 11. TERMINATION

11.1 Without affecting any other right or remedy available to it, Chunc may terminate the Loan Agreement with immediate effect by giving written notice to the Customer if:

11.1.1 the Customer is in material breach of its terms;

11.1.2 the Chair is being used in such a manner which is in material breach of its terms;

11.1.3 the Customer takes any step or action in connection with its entering bankruptcy or administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver or trustee in bankruptcy appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

11.1.4 the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

11.1.5 the Customer's financial position deteriorates to such an extent that in Chunc's reasonable opinion the Customer's capability to adequately fulfil its obligations under the Loan Agreement has been placed in jeopardy.

11.2 On termination of the Loan Agreement for whatever reason:

11.2.1 the Customer shall immediately pay to Chunc all of Chunc's outstanding unpaid invoices or charges and interest and, in respect of the Chair Loan supplied but for which no invoice has been submitted, Chunc may submit an invoice, which shall be payable immediately on receipt;

11.2.2 any provision of the Loan Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Loan Agreement shall remain in full force and effect; and

11.2.3 termination or expiry of the Loan Agreement shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Loan Agreement which existed at or before the date of termination or expiry.



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### 12. GENERAL

- 12.1 Force majeure. Neither party shall be in breach of the Loan Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Loan Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 12.2 Assignment and other dealings. The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Loan Agreement without Chunc's prior written consent.
- 12.3 Chunc may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Loan Agreement.
- 12.4 Confidentiality. Neither party shall use any other party's confidential information for any purpose other than to perform its obligations under the Loan Agreement.

### 12.5 Entire agreement.

- 12.5.1 The Loan Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 12.5.2 Each party acknowledges that in entering into the Loan Agreement it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Loan Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

### 12.6 Variation. No variation of the Loan Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

### 12.7 Waiver.

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



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**12.8 Severance.** If any provision or part-provision of the Loan Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition 12.8 shall not affect the validity and enforceability of the rest of the Loan Agreement.

### 12.9 Notices.

12.9.1 Any notice given to a party under or in connection with the Loan Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at the address noted on the Loan Agreement Details Form.

12.9.2 Any notice shall be deemed to have been received:

12.9.2.1 if delivered by hand, at the time the notice is left at the proper address;

12.9.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.

12.9.3 This condition 12.9 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.

12.9.4 A notice given under the Loan Agreement is not valid if sent by email.

### 12.10 Third party rights.

12.10.1 Unless it expressly states otherwise, the Loan Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Loan Agreement.

12.10.2 The rights of the parties to rescind or vary the Loan Agreement are not subject to the consent of any other person.

**12.11 Governing law.** The Loan Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.

**12.12 Dispute Resolution.** In the event of a dispute arising out of or relating to this contract, including any question regarding its breach, existence, validity or termination, and including any non-contractual claims (whether in tort or otherwise) (Dispute), the parties shall endeavour to reach a resolution of the Dispute satisfactory to both parties. Either party may commence such process by requesting a meeting with the other party, which may take place in person at Chunc's address, or remotely. Each party shall nominate a representative or representatives (not to exceed three) who shall meet to try to resolve the Dispute.



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