

# Anstee & Ware Limited

## General Terms and Conditions for the Performance of Services

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1. Definitions

The following expressions and derivatives thereof appearing in capital letters in these CONDITIONS shall have the meaning hereby assigned to them unless otherwise specified.

**"AFFILIATE"** shall mean any subsidiary or parent or holding company of any company or any other subsidiary of such parent or holding company. For the purpose of this definition "holding company" and "subsidiary" have the meanings given to those expressions in Section 1159 and Schedule 6 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in Sections 1159(1)(b) and (c) thereof, as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee.

**"APPLICABLE LAWS"** shall mean all laws, rules, regulations, by-laws, decrees, orders and the like, whether of governmental or other authority or agency having jurisdiction over the PARTIES, the SERVICES and any SPARE PARTS and which are or may become applicable.

**"CHARGES"** means the prices payable by PURCHASER for the SERVICES and/or the SPARE PARTS.

**"CLAIM"** or **"CLAIMS"** means any claim, demand, cause of action, proceedings, judgement, award (including reasonable legal fees, costs and expenses and reasonable sums paid by way of settlement or compromise) liability, loss, expense, damages, penalty or fine arising out of or in connection with the performance, non-performance or mis-performance of the CONTRACT.

**"CLIENT GROUP"** means, where the PURCHASER is not the ultimate beneficiary of the SERVICES or the end-user of the PURCHASER EQUIPMENT, such beneficiary or end-user, its AFFILIATES and its and their respective directors, officers, employees (including any contract workers), but shall not include any member of the SUPPLIER GROUP.

**"CONDITIONS"** means these general terms and conditions.

**"CONFIDENTIAL INFORMATION"** means any and all information or data (whether oral or visual or recorded in writing or electronically or on any other medium) including information relating to PURCHASER GROUP's or SUPPLIER GROUP's operations, processes, plans, intentions, product information, IP RIGHTS, market opportunities, or business affairs disclosed to or acquired by the other PARTY in connection with the CONTRACT, whether or not the same was so disclosed or acquired before, on or after the date of the CONTRACT.

**"CONSEQUENTIAL LOSS"** means:

- (a) consequential or indirect loss under English law; and/or
- (b) loss and/or deferral of production, loss of product, loss of use, loss of revenue, losses resulting from downtime or the costs of replacement power or compression, profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in (a) above and whether or not foreseeable at the date of the CONTRACT.

**"CONTRACT"** means the contract between the SUPPLIER and the PURCHASER for the supply of SERVICES consisting of the ORDER CONFIRMATION, these CONDITIONS, and any other documents (or parts of them) attached, referenced or specified in them.

**"FORCE MAJEURE"** means the occurrence of any act or event which is outside the control of the PARTY which invokes it and which renders said PARTY unable to comply with all or part of its obligations under the CONTRACT. Provided the foregoing conditions are satisfied, FORCE MAJEURE includes Acts of God (including epidemic, tidal wave, lightning, earthquake, hurricane), hostilities or acts of war (whether declared or not), riots, civil or military disturbances, national or regional strikes (excluding strikes, lock-outs and other industrial disputes or actions by of SUPPLIER GROUP) and acts of any government or public authority or any representative thereof whether or not legally valid and including imposing an export or import restriction. FORCE MAJEURE does not include events such as the insolvency of any PARTY.

**"HSSE"** means health, safety, security and environment.

**"INSOLVENCY EVENT"** means the event of a PARTY becoming bankrupt or making a composition or arrangement with its creditors or a winding-up order of such PARTY being made or (except for the purposes of solvent amalgamation or solvent reconstruction) a resolution for its voluntary winding-up being passed or a provisional Liquidator, Receiver, Administrator or Manager of its business or undertaking being appointed, or a petition being presented for an administration order to be made pursuant to Section 9 of the Insolvency Act 1986, or possession being taken by or on behalf of the holders of any debenture secured by a floating charge of any property comprised in or subject to the floating charge or any equivalent act or thing being done or suffered under any APPLICABLE LAWS.

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

**"ORDER CONFIRMATION"** means the SUPPLIER's written acceptance of the PURCHASER'S order for Services.

**"PARTY"** means PURCHASER and/or SUPPLIER as the case may be and "PARTIES" shall mean PURCHASER and SUPPLIER.

**"PERSON"** means any individual, company, firm, partnership, association or body corporate.

**"PURCHASER"** means the person designated as such in the ORDER CONFIRMATION.

**"PURCHASER GROUP"** means PURCHASER, its AFFILIATES and its and their respective directors, officers, employees (including contract workers), and CLIENT GROUP but shall not include any member of SUPPLIER GROUP.

**"PURCHASER EQUIPMENT"** means any equipment, plant, machinery and/or apparatus upon which the SERVICES are to be performed, as may be specified on the ORDER CONFIRMATION or otherwise agreed in writing (including email) between the parties.

**"SERVICES"** means any repair, maintenance, overhaul, modification, inspection or testing services which may be performed by SUPPLIER for PURCHASER pursuant to the Contract, being any combination of the following: (i) the services detailed in the ORDER CONFIRMATION; (ii) any other services which SUPPLIER explicitly agrees to perform for CUSTOMER in relation to PURCHASER EQUIPMENT; (iii) and any ancillary or incidental services which the Supplier performs for PURCHASER in relation to either of the foregoing.

**"SPARE PART"** means any parts, components, modules and/or materials supplied by SUPPLIER in the course of performing SERVICES.

**"SUBCONTRACTOR"** means any PERSON with whom SUPPLIER has subcontracted directly or indirectly at any level in relation to the provision of the SERVICES.

**"SUPPLIER"** means the Company designated as such on the ORDER CONFIRMATION.

**"SUPPLIER GROUP"** means SUPPLIER, its SUBCONTRACTORS, its and their AFFILIATES, its and their respective directors, officers, employees (including contract workers), but shall not include any member of PURCHASER GROUP.

**"THIRD PARTY"** means any PERSON that is not a member of PURCHASER GROUP or SUPPLIER GROUP.

**"WORKSITE"** means any place at which the SERVICES are to be performed.

#### 1.2. Interpretation

- (a) All headings in these CONDITIONS are used for convenience only and shall not affect the construction or validity of the CONTRACT.
- (b) Any reference herein to a clause shall, unless expressly stated otherwise, be construed as a reference to the relevant clause of these CONDITIONS.
- (c) Reference to any statute, statutory provision or statutory instrument includes a reference to the statute, statutory provision or statutory instrument as amended, extended or re-enacted from time to time.
- (d) Reference to the singular includes a reference to the plural and vice versa. Reference to persons shall include companies and firms and vice versa. Reference to any gender includes a reference to the other genders.
- (e) "Including" shall be construed to mean "including but not limited to".

### 2. BASIS OF CONTRACT

2.1. These CONDITIONS shall apply to the CONTRACT to the exclusion of any other terms that PURCHASER seeks to impose or incorporate, including any terms attached to or referenced in PURCHASER's purchase order or which are implied by trade, custom or course of dealing.

2.2. Any samples, drawings, descriptive matter or advertising produced by SUPPLIER and any descriptions or illustrations contained in SUPPLIER's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the SERVICES described in them. They shall not form part of the CONTRACT or have any contractual force, unless such items have expressly been incorporated into the CONTRACT.

2.3. In the event of any conflict or inconsistency between the various constituent parts of the CONTRACT they shall be interpreted in the following order of priority such that the relevant term or condition of the higher ranking part shall prevail over those of the lower ranking part:

- 2.3.1. the ORDER CONFIRMATION;
- 2.3.2. these CONDITIONS; and
- 2.3.3. any other document attached, referred or specified in them.

### 3. PERFORMANCE OF SERVICES

3.1. SUPPLIER shall perform the SERVICES for the PURCHASER in accordance with the specification of the SERVICES (if any) set out in the ORDER CONFIRMATION in all material respects.

3.2. All personnel employed on the SERVICES shall, for the work they are required to perform, be competent, properly qualified and skilled in accordance with good industry practice.

3.3. Where the SERVICES are to be carried out at a non-SUPPLIER GROUP controlled WORKSITE then PURCHASER shall ensure that:

- 3.3.1. SUPPLIER's representatives are given access to the WORKSITE at the time the SERVICES are to be performed; and
- 3.3.2. SUPPLIER's representatives are given access to and use of such infrastructure and services (including water, electricity, internet access, cranes and lifting equipment) as they may reasonably request in connection with the performance of the SERVICES.

3.4. Where the SERVICES are to be performed at a SUPPLIER GROUP controlled WORKSITE then:

- 3.4.1. as per the ORDER CONFIRMATION, either:
  - (a) SUPPLIER shall collect the PURCHASER EQUIPMENT from the location specified on the ORDER CONFIRMATION at PURCHASER's expense, in which case PURCHASER shall be responsible for ensuring that the PURCHASER EQUIPMENT is adequately protected and packed ready for transportation; or
  - (b) PURCHASER shall deliver the PURCHASER EQUIPMENT to the WORKSITE specified on the ORDER CONFIRMATION; and
- 3.4.2. as per the ORDER CONFIRMATION, either:
  - (a) following completion of the SERVICES, SUPPLIER shall deliver the PURCHASER EQUIPMENT back to the PURCHASER at the location specified on the ORDER CONFIRMATION, at PURCHASER's expense; or

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- (b) following completion of the SERVICES, PURCHASER shall collect the PURCHASER EQUIPMENT from the WORKSITE.
- 3.5. If PURCHASER fails to accept delivery of the PURCHASER EQUIPMENT at the appointed date and time for delivery or fails to collect the PURCHASER EQUIPMENT within 5 (five) business days of SUPPLIER's notification to PURCHASER that the PURCHASER EQUIPMENT is ready for collection (as applicable) then, except where such failure is caused by an event of FORCE MAJEURE or SUPPLIER's failure to comply with its obligations under the CONTRACT:
- SUPPLIER will be deemed to have fulfilled its obligations with respect to delivery of the PURCHASER EQUIPMENT at the date and time SUPPLIER attempted to deliver the PURCHASER EQUIPMENT or at 9.00am on the fifth business day after the day on which SUPPLIER notified PURCHASER that the PURCHASER EQUIPMENT was ready for collection;
  - SUPPLIER shall store the PURCHASER EQUIPMENT until actual physical delivery takes place, and charge PURCHASER for all related costs and expenses (including insurance); and
  - PURCHASER will be liable to SUPPLIER for the costs of delivering and/or of re-attempting delivery of the PURCHASER EQUIPMENT to PURCHASER (including packaging and transportation).
- 3.6. Time shall not be of the essence with respect to the commencement, performance or completion of any SUPPLIER obligation under the CONTRACT. Any dates or timescales quoted by SUPPLIER or specified on the ORDER CONFIRMATION are indicative only and are not legally binding. However, SUPPLIER shall perform its obligations within a reasonable time. SUPPLIER shall not be liable for any delay in respect of the performance of the SERVICES that is caused, and shall be entitled to an extension of time for performance of any of its obligations to the extent that same is prevented or delayed by FORCE MAJEURE, PURCHASER's failure to provide SUPPLIER with adequate delivery instructions or any other instructions that are relevant to the supply of the SERVICES or PURCHASER's failure to comply with its obligations under the CONTRACT.
- #### 4. SUPPLIER'S WARRANTIES
- 4.1. SUPPLIER warrants that:
- 4.1.1. the SERVICES will be provided using the reasonable skill and care to be expected of a reputable supplier experienced in providing services the same or similar to the SERVICES.
- 4.1.2. the SPARE PARTS (if any) will:
- conform in all material respects with any applicable description or specification set out in the ORDER CONFIRMATION; and
  - be free from material defects in design, materials and workmanship.
- 4.2. The relevant Warranty Period in respect of:
- the SERVICES shall be six (6) months from the date of completion of such SERVICES; and
  - the SPARE PARTS shall be six (six) months from the date of completion of the SERVICES or such other period as may be specified in respect of any particular SPARE PARTS on the ORDER CONFIRMATION.
- (the "WARRANTY PERIOD").
- 4.3. Subject to clause 5.4, if:
- PURCHASER gives notice in writing to SUPPLIER during the WARRANTY PERIOD and within a reasonable time of discovery that some or all of the SERVICES and/or SPARE PARTS do not comply with the applicable warranties set out at clause 4.1;
  - SUPPLIER is given a reasonable opportunity to examine the relevant PURCHASER EQUIPMENT; and
  - PURCHASER (if requested to do so by SUPPLIER and where the alleged breach of warranty relates to SPARE PARTS supplied in the course of SERVICES performed on an ex works basis) returns the relevant SPARE PARTS to SUPPLIER's place of business at SUPPLIER's cost;
- then SUPPLIER shall: (i) re-perform the defective SERVICES; and/or (ii) at its sole option, repair or replace the defective SPARE PARTS, or refund the price of the defective SPARE PARTS, or part thereof, in full.
- 4.4. SUPPLIER shall not be liable for the failure of the SERVICES and/or SPARE PARTS to comply with the warranties set out in clause 4.1 in any of the following circumstances:
- the defect arises or is exacerbated because PURCHASER failed to follow SUPPLIER's written instructions or recommendations as to the storage, commissioning, installation, use, repair or maintenance of the PURCHASER EQUIPMENT and/or SPARE PARTS or, in the absence of such instructions or recommendations, because the PURCHASER failed to follow good trade practice regarding same;
  - the defect arises as a result of SUPPLIER following any drawing, design, specification or instruction supplied or given by PURCHASER in respect of the SERVICES, PURCHASER EQUIPMENT and/or SPARE PARTS;
  - PURCHASER alters or modifies the relevant SPARE PARTS without the prior written consent of SUPPLIER;
  - the defect constitutes fair wear and tear;
  - the SERVICES and/or SPARE PARTS differ from their description or specification as a result of changes made to ensure compliance with APPLICABLE LAWS;
  - the defect is the result of wilful or negligent damage caused by a person other than a member of the SUPPLIER GROUP; or
  - the defect is the result of abnormal storage or working conditions.
- 4.5. The warranties provided by the SUPPLIER in respect of the SERVICES and/or SPARE PARTS are limited to those set out in Clause 4.1. Except as provided in this clause 4, SUPPLIER shall have no liability to PURCHASER in respect of the SERVICES and/or SPARE PARTS' failure to comply with the warranties set out in clause 4.1.
- 4.6. 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.
- 4.7. The warranties in:
- 4.7.1. Clause 4.1.1 shall apply to any SERVICES re-performed in accordance with this clause 4 for three (3) months] from the date of re-performance or the until the original Warranty Period for the SERVICES expires, whichever is later; and
- 4.7.2. Clause 4.1.2 shall apply to any repaired or replacement SPARE PARTS 45 days from the date of such repair or replacement or until the original Warranty Period for the SPARE PARTS expires, whichever is later.
- #### 5. CHARGES
- 5.1. As consideration for the provision of the SERVICES and any SPARE PARTS, PURCHASER shall pay SUPPLIER the CHARGES, which (unless the ORDER CONFIRMATION expressly states otherwise) shall be on a time and materials basis:
- the CHARGES shall be calculated in accordance with the Supplier's hourly/daily rates, which may be set out on the ORDER CONFIRMATION or which may otherwise be communicated to PURCHASER;
  - SUPPLIER shall be entitled to increase its hourly/daily rates or charge a supplementary fee to reflect the urgency or importance of the SERVICES, and/or where the performance of the SERVICES requires the personnel engaged by SUPPLIER to work outside SUPPLIER's normal business hours;
  - SUPPLIER shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the SERVICES including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by SUPPLIER for the performance of the SERVICES;
  - SUPPLIER shall be entitled to charge for any materials and SPARE PARTS used or supplied in connection with the SERVICES;
  - The CHARGES are exclusive of all charges for the packaging, packing, shipping, carriage, insurance and delivery of any PURCHASER EQUIPMENT, which PURCHASER shall also be liable to pay; and
  - unless the SUPPLIER explicitly states otherwise in writing, any prices quoted by SUPPLIER or specified on the ORDER CONFIRMATION are merely indicative and are not binding.
- 5.2. SUPPLIER may, by giving notice to PURCHASER prior to the scheduled delivery date, increase the price of the SERVICES and/or SPARE PARTS to reflect any increase in the cost of the same that is due to:
- any request by PURCHASER to change the date or dates for the performance of the SERVICES and/or DELIVERY date(s), quantities or types of the SPARE PARTS requested under the CONTRACT, or the specification for such SERVICES and/or SPARE PARTS as set out in the QUOTATION; or
  - any delay caused by any instructions of PURCHASER or failure by PURCHASER to give SUPPLIER adequate or accurate information or instructions.
- #### 6. INVOICING AND PAYMENT
- 6.1. SUPPLIER's invoices shall be submitted in accordance with the milestones (if any) set out in the ORDER CONFIRMATION, or if no milestones are specified, upon completion of the SERVICES.
- 6.2. PURCHASER shall pay SUPPLIER's invoice in full and cleared funds within thirty (30) calendar days of the end of the month in which the invoice is issued.
- 6.3. If PURCHASER fails to make any payment due to the SUPPLIER under the CONTRACT by the due date for payment, then without prejudice to the SUPPLIER's other rights and remedies:
- PURCHASER shall pay interest on the overdue amount at the rate of four per cent (4%) per annum above the Bank of England base rate from the original due date of the invoice. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. PURCHASER shall pay the interest together with the overdue amount; and
  - the SUPPLIER reserves the right to suspend DELIVERY of any SERVICES and/or SPARE PARTS which are unperformed or undelivered (as applicable) at the due date for such payment unless and until such payment is received.
- 6.4. Any and all amounts due under the CONTRACT shall be paid without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).
- #### 7. TAXES
- 7.1. Unless otherwise stated in the CONTRACT, the CHARGES are exclusive of Value Added Tax, other sales and revenue taxes, and export/import taxes, duties and levies. To the extent any of the foregoing are applicable, PURCHASER shall pay same in addition to the CHARGES.
- #### 8. LIABILITIES
- 8.1. SUPPLIER shall not have any liability to PURCHASER GROUP for any CONSEQUENTIAL LOSS and accordingly PURCHASER shall save, indemnify, defend and hold harmless SUPPLIER GROUP from PURCHASER GROUP's own CONSEQUENTIAL LOSS, whether arising from or relating to or in connection with the performance or non-performance of the CONTRACT.
- 8.2. If either PARTY becomes aware of any incident likely to give rise to a CLAIM under any indemnity under these CONDITIONS, it shall notify the other and both PARTIES shall cooperate fully in investigating the incident, allow the indemnifying party to have conduct of the CLAIM and provide all reasonable assistance in relation to the defence of such CLAIM. Neither PARTY shall make any admission of liability, agreement nor compromise in relation to a CLAIM or any suspected CLAIM without the written prior consent of the other PARTY.
- 8.3. Nothing in these CONDITIONS shall limit or exclude SUPPLIER's liability for death, personal injury, fraud or fraudulent misrepresentation, or for any other matter in respect of which it would be unlawful for SUPPLIER to exclude or restrict liability.
- 8.4. Subject to clause 8.3, SUPPLIER's total liability arising under or in connection with the CONTRACT, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the aggregate of all CHARGES arising under the CONTRACT.
- 8.5. The provisions of this clause 8 shall survive termination or expiration of the CONTRACT.

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### 9. PURCHASER SUPPLIED ITEMS, DOCUMENTS AND SPECIFICATIONS

- 9.1. PURCHASER shall exercise prudence and diligence in verifying the accuracy of its supply of information and particulars to SUPPLIER in respect of the CONTRACT. SUPPLIER shall be entitled to rely on any information supplied by the PURCHASER. However, should SUPPLIER discover any discrepancies, ambiguities or inaccuracies in such information and particulars, it shall inform PURCHASER in writing as soon as reasonably practicable to do so.
- 9.2. Any PURCHASER supplied materials, equipment, tools, drawings, specifications, data and documents ("**PURCHASER MATERIALS**") and all rights in the PURCHASER MATERIALS shall remain the exclusive property of PURCHASER. SUPPLIER shall keep the PURCHASER MATERIALS in safe custody, maintain them in good condition, not dispose or use the same other than in accordance with PURCHASER's written instructions or approval and shall return them to PURCHASER as soon as they are no longer necessary for the performance of the CONTRACT.

### 10. INTELLECTUAL PROPERTY RIGHTS

- 10.1. All IP RIGHTS of PURCHASER shall remain the exclusive ownership of PURCHASER and may be used by SUPPLIER only for the purpose of fulfilling its obligations under the CONTRACT.
- 10.2. All IP RIGHTS of SUPPLIER or its SUBCONTRACTORS shall remain the exclusive property of SUPPLIER or its SUBCONTRACTORS, as applicable.
- 10.3. PURCHASER shall save, indemnify, defend and hold harmless SUPPLIER GROUP from and against all losses, damages, costs, claims, expenses (including reasonable legal expenses) and liabilities that SUPPLIER GROUP may suffer or incur as a result of any claim or allegation that the IP RIGHTS of any THIRD PARTY have been infringed by virtue of SUPPLIER performing the SERVICES or supplying any SPARE PARTS provided that its liability under this clause shall be reduced to the extent that the infringement has been caused or contributed to by the negligence or breach of duty of PURCHASER.

### 11. CONFIDENTIALITY

- 11.1. Subject to clause 11.2, each PARTY undertakes that it shall keep confidential and shall not disclose and shall use only for the purpose of the CONTRACT any CONFIDENTIAL INFORMATION provided by the other PARTY.
- 11.2. The obligations of confidentiality under this clause 11 shall not apply to any CONFIDENTIAL INFORMATION which the receiving PARTY can prove:
- (a) was already known to it prior to its receipt from the disclosing PARTY;
  - (b) was subsequently disclosed to it lawfully by a THIRD PARTY who did not obtain the same (whether directly or indirectly) from the receiving PARTY;
  - (c) was in the public domain at the time of receipt by the receiving PARTY or has subsequently entered the public domain other than by reason of the breach of the provisions of this clause 11 or of any of the obligations of confidence owed to the disclosing PARTY (or its SUBCONTRACTORS as the case may be) by the receiving PARTY or by any of the persons listed in clause 11.3;
  - (d) is independently developed by the receiving PARTY without using or referring to CONFIDENTIAL INFORMATION; or
  - (e) is required to be disclosed by a court of law, regulatory authority or tribunal of competent jurisdiction.
- 11.3. Notwithstanding the provisions of clause 11.1, either PARTY may disclose CONFIDENTIAL INFORMATION provided by the other PARTY to any SUBCONTRACTORS and its professional advisers who need such CONFIDENTIAL INFORMATION for the purpose of enabling SUPPLIER to perform any of its obligations or to exercise its rights under the CONTRACT, provided that such PARTY shall procure that the recipient keeps such CONFIDENTIAL INFORMATION confidential and does not disclose it for any other purpose.
- 11.4. The provisions of this clause 11 shall survive termination or expiration of the CONTRACT.

### 12. TERMINATION

- 12.1. Without limiting its other rights or remedies, either PARTY may terminate the CONTRACT with immediate effect by written notice to the other PARTY if:
- (a) the other PARTY commits a material breach of any term of the CONTRACT and (if such a breach is remediable) fails to promptly commence and thereafter diligently proceed to remedy such breach; or
  - (b) the other PARTY suffers an INSOLVENCY EVENT.
- 12.2. Without limiting its other rights or remedies, SUPPLIER may terminate the CONTRACT with immediate effect by written notice to PURCHASER, if any amount due under this CONTRACT remains unpaid sixty (60) calendar days after the due date for payment despite notice having been given to the PURCHASER requiring payment.
- 12.3. On SUPPLIER's termination of the CONTRACT as a result of PURCHASER's default, PURCHASER shall immediately pay to SUPPLIER all of SUPPLIER's outstanding unpaid invoices and interest, and shall pay all costs and expenses reasonably incurred by SUPPLIER in preparation for the performance of its obligations under the CONTRACT and arising out of such termination.
- 12.4. Without limiting the PARTIES' other rights or remedies, the PURCHASER may terminate the CONTRACT for convenience by written notice to the SUPPLIER. If the PURCHASER terminates the CONTRACT early pursuant to this clause 12.4, the PURCHASER shall pay any unpaid invoices of SUPPLIER, together with a termination fee in the amount of any anticipated profit the SUPPLIER would otherwise be entitled to if the CONTRACT continued in effect and all costs and expenses, reasonably and properly incurred by the SUPPLIER in the performance of the CONTRACT prior to receipt of such notice, in relation to such early termination of the CONTRACT.
- 12.5. Termination of the CONTRACT, however arising, shall not affect any of the PARTIES' rights, remedies, obligations and liabilities that have accrued as at termination.

### 13. FORCE MAJEURE

- 13.1. Neither PURCHASER nor SUPPLIER shall be responsible for any failure to fulfil any term or condition of the CONTRACT if and to the extent that fulfilment has been delayed or temporarily prevented by an event of FORCE MAJEURE which has been notified in accordance with this clause 17.

- 13.2. In the event of a FORCE MAJEURE occurrence, the PARTY that is or may be delayed in performing its obligations under the CONTRACT shall notify the other PARTY without delay giving the full particulars thereof and shall use all reasonable endeavours to remedy the situation without delay.

### 14. GENERAL LEGAL PROVISIONS

- 14.1. The CONTRACT constitutes the entire agreement between the PARTIES with respect to the provision of the SERVICES and any SPARE PARTS and supersedes all prior oral and written understandings, agreements, qualifications and representations made between the PARTIES prior to the CONTRACT. Each PARTY acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the other PARTY which is not set out in the CONTRACT.
- 14.2. If any provision of these CONDITIONS shall be judged invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of any other provision of these CONDITIONS except only so far as shall be necessary to give effect to the construction of such invalidity, and in such a case any such invalid provision shall be deemed severed from these CONDITIONS without affecting in any way the validity of the balance of these CONDITIONS.
- 14.3. A waiver of any right under the CONTRACT is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a PARTY in exercising any right or remedy under the CONTRACT or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise.
- 14.4. Termination of the CONTRACT and/or PURCHASER's acceptance of the SERVICES or any SPARE PARTS or any part thereof shall not release the PARTIES from obligations which expressly or by their nature survive the CONTRACT or extend beyond termination of the CONTRACT and any acceptance of the SERVICES and/or any SPARE PARTS.
- 14.5. All notices and other communications to be given under the CONTRACT shall be in writing and delivered to the other PARTY at its registered office or such other address as may be notified in writing to the other PARTY from time to time.

### 15. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 15.1. The PARTIES agree that The Contracts (Rights of Third Parties) Act 1999 (the "**ACT**") shall apply to the CONTRACT only in respect of any relief from liability, hold harmless, indemnity or benefit created in favour of to those members of SUPPLIER GROUP (other than SUPPLIER) pursuant to clauses 8.1 and 10.3.
- 15.2. Subject to clause 15.1 above, the PARTIES intend that no provision of the CONTRACT shall confer any benefit, nor be enforceable by any PERSON who is not a party by virtue of the ACT.

### 16. ASSIGNMENT

- SUPPLIER may at any time assign or novate any of its rights or obligations under the CONTRACT to any of its AFFILIATES. PURCHASER may not assign or novate any of its rights or obligation to any other person without SUPPLIER's prior written consent.

### 17. CHANGES OR VARIATIONS TO THE CONTRACT

- 17.1. Subject to clause 17.3, any variation, including any additional terms and conditions, to the CONTRACT shall only be effective when agreed expressly agreed to by the PARTIES in writing (including email).
- 17.2. Any adjustment to the CHARGES resulting from any such variation shall be valued at the appropriate rates and prices included in the CONTRACT or, in the absence of any appropriate rates and prices, a fair valuation shall be made.
- 17.3. The SUPPLIER shall have the right, without agreeing the same in writing with PURCHASER, to make any changes to the SERVICES and/or SPARE PARTS which are necessary to comply with any APPLICABLE LAWS or which do not materially affect the nature or quality of the SERVICES and/or SPARE PARTS. SUPPLIER shall notify PURCHASER of the same in any such event.

### 18. GOVERNING LAW

- The CONTRACT, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and the PARTIES irrevocably submit to the exclusive jurisdiction of the English courts.