

Parsons Peebles Generation Limited

General Terms and Conditions for the Supply 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 DELIVERABLES and which are or may become applicable.

"CHARGES" means the aggregate of all sums payable under the CONTRACT calculated in accordance with the prices set out in the QUOTATION as may be amended in the ORDER CONFIRMATION, in the currency as specified in the QUOTATION.

"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 DELIVERABLES, such beneficiary or end-user, its AFFILIATES and its and their respective directors, officers, employees (including any agency personnel), 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:

- consequential or indirect loss under English law; and/or
- 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 and/or DELIVERABLES consisting of the QUOTATION, the ORDER, any ORDER CONFIRMATION, these CONDITIONS, and any other documents (or parts of them) attached, referenced or specified in the QUOTATION or the ORDER CONFIRMATION.

"DELIVERABLES" means the deliverables as detailed in the QUOTATION or the ORDER CONFIRMATION including any refurbished or repaired equipment, SPARE PARTS, reports, specifications, certification documentation, or drawings.

"DELIVERY" shall mean the point in time when the delivery of any DELIVERABLES has been completed in accordance with clause 3.

"FORCE MAJEURE" means the occurrence of any act or event, which is unforeseeable and 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" means PURCHASER's order for SERVICES and/or DELIVERABLES as set out in PURCHASER's purchase order form.

"ORDER CONFIRMATION" shall have the meaning set out in clause 2.3.

"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.

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

"PURCHASER PROVIDED ITEMS" means any items of equipment or machinery, including any engines or motors which require refurbishment, provided by the PURCHASER to the SUPPLIER pursuant to the CONTRACT.

"QUOTATION" means the quotation(s) provided by the SUPPLIER to the PURCHASER in respect of the SERVICES and any DELIVERABLES.

"SERVICES" means the services to be supplied by SUPPLIER to PURCHASER as detailed in the QUOTATION or the ORDER CONFIRMATION

"SPARE PART" means any part of a machine provided by the SUPPLIER other than a complete machine unless otherwise specified in the QUOTATION.

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

"SUPPLIER" means Parsons Peebles Generation Limited, incorporated in Scotland with company number SC281567 and registered office at 1 Redwood Crescent, East Kilbride, Glasgow, G74 5PA.

"SUPPLIER GROUP" means SUPPLIER, its SUBCONTRACTORS, its and their AFFILIATES, its and their respective directors, officers, employees (including agency personnel), 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 all the lands, waters and other places on, under, in or through which the SERVICES are carried out, including manufacturing, fabrication and storage facilities, design offices, offshore installations, floating construction equipment, vessels, offices and workshops.

1.2. Interpretation

- All headings in these CONDITIONS are used for convenience only and shall not affect the construction or validity of the CONTRACT.
- Any reference herein to a clause shall, unless expressly stated otherwise, be construed as a reference to the relevant recital or clause of these CONDITIONS.
- 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.
- 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.
- "Including" shall be construed to mean "including but not limited to".

2. BASIS OF CONTRACT

- A QUOTATION given by SUPPLIER shall only be valid for a period of thirty (30) calendar days from its date of issue.
- The ORDER submitted by PURCHASER to purchase the SERVICES and/or DELIVERABLES from SUPPLIER in accordance with any QUOTATION to which it refers shall specify PURCHASER's requirements for such SERVICES and/or DELIVERABLES. PURCHASER is responsible for ensuring that such requirements for the SERVICES and/or DELIVERABLES (including any applicable specification relating thereto) are set out clearly in the ORDER and are complete and accurate.
- The SUPPLIER may issue a written acceptance of the ORDER to PURCHASER (the **"ORDER CONFIRMATION"**).
- 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 the ORDER or which are implied by trade, custom or course of dealing.
- Any samples, drawings, descriptive matter or advertising produced by SUPPLIER and any descriptions or illustrations contained in SUPPLIER's catalogues or brochures are, unless specified in the QUOTATION, produced for the sole purpose of giving an approximate idea of the SERVICES and/or DELIVERABLES 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.

3. SUPPLY OF SERVICES AND DELIVERABLES

- SUPPLIER shall supply the SERVICES and any DELIVERABLES to PURCHASER in accordance with the specification of the SERVICES and/or the DELIVERABLES as set out in the QUOTATION in all material respects.
- SERVICES and/or DELIVERABLES shall, subject to clause 3.13, be provided in accordance with the time period as set out in the QUOTATION or ORDER CONFIRMATION, or if no time is specified, then within a reasonable time period.

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- 3.3. 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.
- 3.4. SUPPLIER shall be responsible for any SERVICES performed by any agency personnel as if such SERVICES were performed by an employee of SUPPLIER.
- 3.5. Where the SERVICES are to be carried out at a non-SUPPLIER GROUP controlled WORKSITE:
(a) SUPPLIER shall commence the SERVICES at or from the mobilisation point on the commencement date, as the same shall be detailed in the ORDER and shall proceed with the SERVICES in accordance with the schedule agreed in the CONTRACT.
(b) SUPPLIER shall use reasonable endeavours to ensure such WORKSITE is free of waste materials, rubbish and debris generated by SUPPLIER GROUP. On completion of the SERVICES, or part of them, SUPPLIER shall (except as otherwise instructed by PURCHASER) clear and remove all SUPPLIER equipment, waste material, rubbish and debris generated by SUPPLIER GROUP from such WORKSITE, leaving it in a clean, tidy and safe condition.
(c) SUPPLIER shall (so far as reasonably practicable to do so) comply with PURCHASER's instructions and directions on all matters relating to the SERVICES.
- 3.6. If any PURCHASER PROVIDED ITEMS are provided to SUPPLIER under the CONTRACT, SUPPLIER shall:
(a) treat such items with reasonable care;
(b) insure such items whilst they are held in SUPPLIER's possession; and
(c) inspect such items within five (5) working days and notify PURCHASER should any amendment be required to the QUOTATION further to such inspection.
- 3.7. In relation to DELIVERABLES which are items of equipment or SPARE PARTS, the provisions of clauses 3.9 to 3.16 shall apply in respect of DELIVERY. Clause 3.13 shall also apply in respect of the performance of SERVICES.
- 3.8. In relation to ORDERS for DELIVERABLES with DELIVERY within the United Kingdom, SUPPLIER shall deliver such DELIVERABLES to the location set out in the QUOTATION, or as otherwise agreed by the PARTIES prior to DELIVERY.
- 3.9. In relation to ORDERS for DELIVERABLES with DELIVERY outside the United Kingdom, DELIVERY shall be EXW (Incoterms 2010), unless otherwise specified in the CONTRACT, and the SUPPLIER shall notify PURCHASER when the DELIVERABLES are ready for collection from its premises at Rosyth or such other DELIVERY point agreed by the PARTIES.
- 3.10. If applicable, SUPPLIER shall ensure that DELIVERY of any DELIVERABLES is accompanied by a delivery note which shows all relevant PURCHASER and SUPPLIER reference numbers, the type and quantity of the DELIVERABLES (including the code number of the DELIVERABLES, where applicable), special storage instructions (if any) and, if the ORDER is being delivered in instalments, the outstanding balance of DELIVERABLES (if any) remaining to be delivered. Each DELIVERY shall also comply with all APPLICABLE LAWS relating to the labelling, packaging, storage, handling and delivery of the DELIVERABLES.
- 3.11. DELIVERY of the DELIVERABLES shall be completed when the DELIVERABLES are at the location specified for DELIVERY ready for unloading or collection, as applicable.
- 3.12. SUPPLIER may deliver the DELIVERABLES by instalments, if applicable, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in DELIVERY or defect in an instalment shall not entitle PURCHASER to cancel any other instalment.
- 3.13. The time of performance of the SERVICES and DELIVERY are not of the essence. However, SUPPLIER shall use reasonable endeavours to prevent or minimise any delay in commencing manufacture of, completing and/or delivering any part of the DELIVERABLES and/or SERVICES for which there is an agreed date for such commencement, completion and/or DELIVERY. SUPPLIER shall not be liable for any delay in respect of the performance of the SERVICES and/or DELIVERY that is caused, and shall be entitled to an extension of any agreed date or time for performance of the SERVICES and/or DELIVERY in the event of, FORCE MAJEURE or PURCHASER's failure to provide SUPPLIER with adequate delivery instructions or any other instructions that are relevant to the supply of the SERVICES and/or DELIVERABLES.
- 3.14. Subject to clause 3.15, if PURCHASER fails to accept delivery of the DELIVERABLES within three (3) business days of SUPPLIER's notification to PURCHASER that the DELIVERABLES are ready for collection or unloading, as applicable, then, except where such failure or delay is caused by an event of FORCE MAJEURE, or SUPPLIER's failure to comply with its obligations under the CONTRACT:
(a) DELIVERY of the DELIVERABLES shall be deemed to have been completed at 9.00am on the third business day after the day on which SUPPLIER notified PURCHASER that the DELIVERABLES were ready; and
(b) SUPPLIER shall store the DELIVERABLES until actual physical delivery takes place, and charge PURCHASER for all related costs and expenses (including insurance).
- 3.15. Where SPARE PARTS are carried offshore by representatives of SUPPLIER, PURCHASER shall accept DELIVERY of such SPARE PARTS as soon as reasonably practicable to do so and, in any event, within two (2) working days of such representative's arrival offshore.
- 4. INSPECTION AND ACCEPTANCE**
- 4.1. PURCHASER shall be entitled to inspect, test and review the DELIVERABLES at all reasonable times throughout the refurbishment, repair or manufacture of the same, provided that PURCHASER gives SUPPLIER no less than forty eight (48) hours' notice and subject to compliance by PURCHASER with SUPPLIER's HSSE procedures if such inspection takes place at SUPPLIER's or its SUBCONTRACTOR's WORKSITE. Within two (2) business days of such inspection, PURCHASER shall inform SUPPLIER if it discovers that the DELIVERABLES (or any part thereof) do not comply or are unlikely to comply with the material requirements of the CONTRACT, and SUPPLIER shall use reasonable endeavours to take remedial action as soon as reasonably practicable to ensure such compliance. PURCHASER shall have the right to conduct further inspections, tests or reviews after SUPPLIER has carried out its remedial actions.
- 4.2. PURCHASER shall inspect the DELIVERABLES within five (5) business days of DELIVERY and notify SUPPLIER if it intends to reject any DELIVERABLES which are DELIVERED and which fail to meet the material requirements of the CONTRACT.
- 4.3. If PURCHASER does not notify SUPPLIER of its intention to reject the DELIVERABLES in accordance with clause 4.2 then, after the expiry of five (5) business days from DELIVERY, the DELIVERABLES will be deemed to have been accepted by PURCHASER.
- 5. WARRANTY AND DEFECTS CORRECTION REGARDING DELIVERABLES**
- 5.1. SUPPLIER warrants that:
- 5.1.1. 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.
- 5.1.2. on DELIVERY and for a period of twelve (12) calendar months from the date commissioning of the relevant machine or, if earlier, eighteen (18) calendar months from the date of despatch (or such other period specified in the ORDER CONFIRMATION) the DELIVERABLES shall:
(a) conform in all material respects with any applicable description or specification set out in the QUOTATION; and
(b) be free from material defects in materials and workmanship.
- 5.2. The relevant warranty period in respect of:
(a) the SERVICES shall be six (6) months from the date of performance of the SERVICES; and
(b) the DELIVERABLES shall be as set out in clause 5.1.2.
(the 'WARRANTY PERIOD').
- 5.3. Subject to clause 5.4, if:
(a) 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 DELIVERABLES do not comply with the applicable warranties set out at clause 5.1;
(b) SUPPLIER is given a reasonable opportunity to examine DELIVERABLES (where the alleged breach of warranty relates to DELIVERABLES); and
(c) PURCHASER (if requested to do so by SUPPLIER and where the alleged breach of warranty relates to DELIVERABLES) returns the DELIVERABLES 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 DELIVERABLES, or refund the price of the defective DELIVERABLES, or part thereof, in full.
- 5.4. SUPPLIER shall not be liable for the failure of the SERVICES and/or DELIVERABLES to comply with the warranties set out in clause 5.1 in any of the following circumstances:
(a) The defect arises or is exacerbated because PURCHASER failed to follow SUPPLIER's written instructions as to the storage, commissioning, installation, use and maintenance of the DELIVERABLES or (if there are none) good trade practice regarding the same;
(b) The defect arises as a result of SUPPLIER following any drawing, design or specification supplied by PURCHASER in respect of the SERVICES and/or DELIVERABLES;
(c) PURCHASER alters or modifies such DELIVERABLES without the prior written consent of SUPPLIER;
(d) The defect constitutes fair wear and tear;
(e) The SERVICES and/or DELIVERABLES differ from their description or specification as a result of changes made to ensure compliance with APPLICABLE LAWS;
(f) The defect is the result of wilful or negligent damage caused by a person other than a member of the SUPPLIER GROUP; or
(g) The defect is the result of abnormal storage or working conditions.
- 5.5. The warranties provided by the SUPPLIER in respect of the SERVICES and/or DELIVERABLES are limited to those set out in Clause 5.1. Except as provided in this clause 5, SUPPLIER shall have no liability to PURCHASER in respect of the SERVICES and/or DELIVERABLES' failure to comply with the warranties set out in clause 5.1.
- 5.6. 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.
- 5.7. The warranties in:
5.7.1. Clause 5.1.1 shall apply to any re-performed SERVICES in accordance with this clause 5 for six (6) months from the date of re-performance or twelve (12) months from the date of performance of the original SERVICES, whichever is the earlier; and
5.7.2. Clause 5.1.2 shall apply to any repaired or replacement DELIVERABLES supplied by SUPPLIER in accordance with this clause 5 for twelve (12) calendar months from such repair or replacement or twenty-four (24) calendar months from the date of DELIVERY of the original DELIVERABLES, whichever is the earlier.
- 6. PERMITS, LICENCES AND COMPLIANCE WITH APPLICABLE LAWS**
- 6.1. SUPPLIER shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the CONTRACT.
- 6.2. Without prejudice to the provisions of clause 11 of these CONDITIONS, SUPPLIER shall observe, be bound by and comply with all APPLICABLE LAWS.
- 7. TITLE AND RISK**
- 7.1. The risk in the DELIVERABLES shall pass to PURCHASER on DELIVERY.
- 7.2. Title to the DELIVERABLES, other than PURCHASER PROVIDED ITEMS shall not pass to PURCHASER until SUPPLIER receives payment in full (in cash or cleared funds) for the DELIVERABLES.
- 7.3. Until title to the DELIVERABLES has passed to PURCHASER, PURCHASER shall:
(a) Prior to installation, store the DELIVERABLES separately from all other goods held by PURCHASER so that they remain identifiable as SUPPLIER's property;
(b) Not remove, deface or obscure any identifying mark on or relating to the DELIVERABLES;

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- (c) Maintain the DELIVERABLES in satisfactory condition and keep them insured against all risks for their full price from the date of DELIVERY;
- (d) Notify SUPPLIER immediately if it becomes subject to an INSOLVENCY EVENT; and
- (e) Give SUPPLIER such information relating to the DELIVERABLES as SUPPLIER may require from time to time.
- 7.4. If before title to the DELIVERABLES passes to PURCHASER, PURCHASER becomes subject to an INSOLVENCY EVENT, then, without limiting any other right or remedy SUPPLIER may have, SUPPLIER may at any time (i) require PURCHASER to deliver up all DELIVERABLES in its possession which have not been resold or irrevocably incorporated into another product; and (ii) if PURCHASER fails to do so promptly, enter any premises of PURCHASER or of any THIRD PARTY where the DELIVERABLES are stored in order to recover them at PURCHASER's cost.
- 8. CHARGES**
- 8.1. In consideration for the provision of the SERVICES and any DELIVERABLES, PURCHASER shall pay SUPPLIER the CHARGES, which shall be charged on a time and materials basis unless agreed otherwise between the PARTIES in writing.
- 8.2. The CHARGES shall be as set out in the QUOTATION, or if none, the ORDER CONFIRMATION or, if no charges are quoted, as set out in SUPPLIER's published rates list in force as at DELIVERY (in respect of DELIVERABLES) or at the date of performance of the SERVICES (in respect of SERVICES).
- 8.3. Unless otherwise stated in the CONTRACT, the CHARGES are:
- (a) exclusive of amounts in respect of UK value added tax chargeable for the time being ("VAT"). Where any taxable supply for VAT purposes is made under the CONTRACT by SUPPLIER to PURCHASER, PURCHASER shall, on receipt of a valid VAT invoice from SUPPLIER, pay to SUPPLIER such additional amounts in respect of VAT as are chargeable on the supply of the SERVICES and/or the DELIVERABLES at the same time as payment is due for the supply of such SERVICES and/or the DELIVERABLES; and
- (b) exclusive of all charges for the packaging, packing, shipping, carriage, insurance and delivery of any DELIVERABLES and any duties, taxes, imposts or levies, other than VAT; and PURCHASER shall pay to SUPPLIER such additional amounts as set out in this clause 8.3 and identified in SUPPLIER's invoice.
- 8.4. SUPPLIER may, by giving notice to PURCHASER prior to the scheduled delivery date, increase the price of the SERVICES and/or DELIVERABLES to reflect any increase in the cost of the same that is due to:
- (a) Any factor beyond SUPPLIER's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs) provided that, following such increase, the PURCHASER shall have the right to terminate the ORDER by giving notice to SUPPLIER within 14 (fourteen) days of being notified of the price increase;
- (b) 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 DELIVERABLES requested under the CONTRACT, or the specification for such SERVICES and/or DELIVERABLES as set out in the QUOTATION; or
- (c) Any delay caused by any instructions of PURCHASER or failure by PURCHASER to give SUPPLIER adequate or accurate information or instructions.
- 9. INVOICING AND PAYMENT**
- 9.1. SUPPLIER shall invoice PURCHASER at the address specified in the ORDER for all sums due under the CONTRACT referencing the ORDER number. Invoices shall be submitted in accordance with the milestones set out in the QUOTATION (if any) or the ORDER, or if no milestones are specified, upon completion of the SERVICES or DELIVERY of the DELIVERABLES, as applicable.
- 9.2. If PURCHASER disputes any invoice, PURCHASER shall within ten (10) calendar days notify SUPPLIER of the amount(s) under dispute and SUPPLIER shall submit a corresponding credit note, bearing the reference and details of the original invoice, within five (5) business days of receipt of such notification. PURCHASER shall pay the undisputed part of the invoice in accordance with clause 9.3. If on resolution of any dispute further sums are due to the SUPPLIER, SUPPLIER shall invoice such sums and these shall be payable in accordance with clause 9.3 together with interest on the further amount at the rate of three per cent (3%) per annum above the Bank of England base rate from the date of the original invoice.
- 9.3. PURCHASER shall pay SUPPLIER's invoice in full and cleared funds within thirty (30) calendar days of the date of the invoice, and in such currency specified in the QUOTATION, to such bank account as SUPPLIER shall designate on such invoices.
- 9.4. 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:
- 9.4.1. 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
- 9.4.2. the SUPPLIER reserves the right to suspend DELIVERY of any SERVICES and/or DELIVERABLES which are unperformed or undelivered (as applicable) at the due date for such payment unless and until such payment is received.
- 9.5. Subject to clause 9.2, 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).
- 10. TAXES**
- Subject to clause 8.3, SUPPLIER shall pay all taxes, duties, levies, charges and contributions (including national insurance and social security benefits) assessed against it in connection with the SERVICES and/or DELIVERABLES.
- 11. LIABILITIES**
- 11.1. Except to the extent of any LIQUIDATED DAMAGES, 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.
- 11.2. 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 co-operate 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.
- 11.3. Nothing in these CONDITIONS shall limit or exclude SUPPLIER's liability for death, personal injury, fraud or fraudulent misrepresentation, under the IP indemnity at clause 13.4, or for any other matter in respect of which it would be unlawful for SUPPLIER to exclude or restrict liability.
- 11.4. Subject to clause 11.3, SUPPLIER's total liability to PURCHASER in respect of all losses 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 one hundred per cent (100%) of the CHARGES.
- 11.5. The provisions of this clause 11 shall survive termination or expiration of the CONTRACT.
- 12. PURCHASER SUPPLIED ITEMS, DOCUMENTS AND SPECIFICATIONS**
- 12.1. 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.
- 12.2. 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.
- 13. INTELLECTUAL PROPERTY RIGHTS**
- 13.1. 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.
- 13.2. All IP RIGHTS of SUPPLIER or its SUBCONTRACTORS shall remain the exclusive property of SUPPLIER or its SUBCONTRACTORS, as applicable. SUPPLIER hereby grants a royalty-free, non-exclusive licence to PURCHASER (and to any end user to which PURCHASER supplies any DELIVERABLES) to use the drawings supplied to it by SUPPLIER and the manuals provided by SUPPLIER only as may be necessary to install, use, maintain or repair the DELIVERABLES for the duration of the CONTRACT. If necessary, SUPPLIER shall use reasonable endeavours to procure the grant by any SUBCONTRACTORS of a similar to that granted in this clause 13.2 licence in respect of any SUBCONTRACTOR IP RIGHTS. Neither the licence granted pursuant to this clause 13.2 nor any other provision of the CONTRACT shall create any right or interest for the PURCHASER in respect of the detailed design, design drawings or underlying or internal design of the machine to which this CONTRACT relates. The licence granted pursuant to this clause 13.2 may not be transferred without the prior written consent of SUPPLIER (such consent not to be unreasonably withheld or delayed).
- 13.3. SUPPLIER warrants that the performance of the SERVICES and the provision of any DELIVERABLES (and any component part thereof) shall not infringe any IP RIGHTS of any THIRD PARTY.
- 13.4. SUPPLIER shall save, indemnify, defend and hold harmless PURCHASER GROUP from all CLAIMS arising out of or in connection with SUPPLIER's performance of its obligations under the CONTRACT, except where any such alleged or actual infringement necessarily arises from the ORDER and/or PURCHASER's instructions. However, SUPPLIER shall inform PURCHASER as soon as reasonably practicable to do so should it become aware of any such infringement or potential infringement as a result of PURCHASER's instructions.
- 13.5. In the event of any such infringement, SUPPLIER may, at its sole option (a) procure the right to perform the SERVICES and/or use the DELIVERABLES without impairing the level of performance of the SERVICES or the suitability of the DELIVERABLES; or (b) modify, reperform or replace the SERVICES or DELIVERABLES, as applicable, so that they are rendered non-infringing.
- 13.6. To the extent that the DELIVERABLES are to be refurbished, repaired or manufactured in accordance with a specification provided by PURCHASER, PURCHASER shall save, indemnify, defend and hold harmless SUPPLIER GROUP from all CLAIMS arising out of or in connection with SUPPLIER's use of the specification provided by PURCHASER.
- 13.7. The provisions of this clause 13 shall survive termination or expiration of the CONTRACT.
- 14. CONFIDENTIALITY**
- 14.1. Subject to clause 14.2, 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.
- 14.2. The obligations of confidentiality under this clause 14 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 14 or of any of the obligations of confidence owed to the

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- disclosing PARTY (or its SUBCONTRACTORS as the case may be) by the receiving PARTY or by any of the persons listed in clause 14.3;
- (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.
- 14.3. Notwithstanding the provisions of clause 14.1, 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.
- 14.4. The provisions of this clause 14 shall survive termination or expiration of the CONTRACT.
- 15. AUDIT**
PURCHASER and its authorised representatives shall have the right to audit SUPPLIER's compliance with its obligations under the CONTRACT, during normal business hours and on providing SUPPLIER with no less than ten (10) business days' notice in writing of the same. SUPPLIER shall use reasonable endeavours to cooperate with PURCHASER and its authorised representatives in any such audit.
- 16. TERMINATION**
- 16.1. 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.
- 16.2. 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.
- 16.3. 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.
- 16.4. 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 16.4, 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.
- 16.5. Termination of the CONTRACT, however arising, shall not affect any of the PARTIES' rights, remedies, obligations and liabilities that have accrued as at termination.
- 16.6. Clauses which expressly or by implication survive termination of the CONTRACT shall continue in full force and effect.
- 17. FORCE MAJEURE**
- 17.1. 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.
- 17.2. 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.
- 18. SUBCONTRACTORS**
SUPPLIER shall be responsible for all work, acts, omissions and defaults of any SUBCONTRACTOR as fully as if they were work, acts, omissions or defaults of SUPPLIER.
- 19. INDEPENDENCE OF SUPPLIER**
SUPPLIER warrants and represents that it is acting as an independent SUPPLIER and neither SUPPLIER nor any of its employees or personnel shall be the employees, agents or servants of PURCHASER.
- 20. GENERAL LEGAL PROVISIONS**
- 20.1. The CONTRACT constitutes the entire agreement between the PARTIES with respect to the provision of the SERVICES and any DELIVERABLES 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.
- 20.2. 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.
- 20.3. 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.
- 20.4. Termination of the CONTRACT and/or PURCHASER's acceptance of the SERVICES or any DELIVERABLES 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 DELIVERABLES.
- 20.5. 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.
- 21. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**
- 21.1. 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 (i) those members of PURCHASER GROUP (other than PURCHASER) pursuant to clauses 13.4 and 14; and (ii) to those members of SUPPLIER GROUP (other than SUPPLIER) pursuant to clauses 11.1, 13.6 and 14.
- 21.2. Subject to clause 21.1 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.
- 21.3. Notwithstanding the foregoing, the CONTRACT may be rescinded, amended or varied by the PARTIES without notice to or the consent of any of said members even if, as a result, any of said members' right to enforce a term of the CONTRACT may be varied or extinguished.
- 21.4. In enforcing any right to which it is entitled by virtue of the ACT and the provisions of the CONTRACT, the remedies of any of those members referred to in clause 21.1 above shall be limited to damages.
- 21.5. Any of those members referred to in clause 21.1 above shall not be entitled to assign any benefit or right conferred on it under the CONTRACT by virtue of the ACT.
- 22. ASSIGNMENT**
SUPPLIER may at any time assign any of its rights or obligations under the CONTRACT to any of its AFFILIATES.
- 23. CHANGES OR VARIATIONS TO THE CONTRACT**
- 23.1. Subject to clause 23.3, any variation, including any additional terms and conditions, to the CONTRACT shall only be effective when agreed in writing and signed by the authorised signatories of both PARTIES or, in respect of minor amendments to the CONTRACT, agreed by email.
- 23.2. Any adjustment to the CONTRACT PRICE and/or DELIVERY date 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.
- 23.3. The SUPPLIER shall have the right, without agreeing the same in writing with PURCHASER, to make any changes to the SERVICES and/or DELIVERABLES which are necessary to comply with any APPLICABLE LAWS or which do not materially affect the nature or quality of the SERVICES and/or DELIVERABLES. SUPPLIER shall notify PURCHASER of the same in any such event.
- 24. 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.