

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 GOODS or the SERVICES 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 end user of the GOODS or the ultimate beneficiary of the SERVICES, 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:

- (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 the GOODS and/or performance of the SERVICES 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.

"DELIVERY" shall mean the point in time when the delivery of any GOODS 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.

"GOODS" means the goods as detailed in the QUOTATION or the ORDER CONFIRMATION.

"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 GOODS and/or SERVICES 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.

"QUOTATION" means the quotation(s) provided by the SUPPLIER to the PURCHASER in respect of the GOODS and/or the SERVICES.

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

"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 GOODS.

"SUPPLIER" means Preformed Windings Limited, incorporated in England with company number 07462547 and registered office at Farm View Works Sheffield Road, Hackenthorpe, Sheffield, England, S12 4LT.

"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, offices and workshops.

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 recital or 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. A QUOTATION given by SUPPLIER shall only be valid for a period of thirty (30) calendar days from its date of issue.
- 2.2. The ORDER submitted by PURCHASER to purchase the GOODS and/or SERVICES from SUPPLIER in accordance with any QUOTATION to which it refers shall specify PURCHASER's requirements for such GOODS and/or SERVICES. PURCHASER is responsible for ensuring that such requirements for the GOODS and/or SERVICES (including any applicable specification relating thereto) are set out clearly in the ORDER and are complete and accurate.
- 2.3. The SUPPLIER may issue a written acceptance of the ORDER to PURCHASER (the **"ORDER CONFIRMATION"**).
- 2.4. 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.
- 2.5. 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 GOODS and/or 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.

3. SUPPLY OF SERVICES AND GOODS

- 3.1. SUPPLIER shall supply the GOODS to and perform the SERVICES for PURCHASER in accordance with the specification of the GOODS and/or the SERVICES as set out in the QUOTATION in all material respects. Such GOODS and/or SERVICES shall 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.
- 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. SUPPLIER shall be responsible for any SERVICES performed by any agency personnel as if such SERVICES were performed by an employee of SUPPLIER.
- 3.4. 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.
- 3.5. In relation to GOODS which are items of equipment, the provisions of clauses 3.8 to 3.14 shall apply in respect of DELIVERY.
- 3.6. In relation to ORDERS for GOODS with DELIVERY within the United Kingdom, SUPPLIER shall deliver such GOODS:
- (a) on the date or within the period specified in the QUOTATION, as may be updated in the ORDER CONFIRMATION, or, if no such date or period is specified, within a reasonable time;
- (b) to the location set out in the QUOTATION, or as otherwise agreed by the PARTIES prior to DELIVERY; and
- (c) during normal business hours (9.00am until 5.00pm GMT) or as otherwise agreed by the PARTIES.
- 3.7. In relation to ORDERS for GOODS 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 GOODS are ready for collection from its premises at East Kilbride or such other DELIVERY point agreed by the PARTIES.
- 3.8. If applicable, SUPPLIER shall ensure that DELIVERY of any GOODS is accompanied by a delivery note which shows all relevant PURCHASER and SUPPLIER reference numbers, the type and quantity of the GOODS (including the code number of the GOODS, where applicable), special storage instructions (if any) and, if the ORDER is being delivered in instalments, the outstanding balance of GOODS (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 GOODS.
- 3.9. DELIVERY of the GOODS shall be completed when the GOODS are at the location specified for DELIVERY ready for unloading or collection, as applicable.
- 3.10. SUPPLIER may deliver the GOODS 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.
- 3.11. The time of DELIVERY is 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 GOODS for which there is an agreed date for such commencement, completion and/or DELIVERY. SUPPLIER shall not be liable for any delay in DELIVERY of the GOODS that is caused, and shall be entitled to an extension of any agreed date or time for 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 GOODS. Notwithstanding the foregoing, in the event that SUPPLIER fails to deliver the GOODS by any quoted date for delivery, and an extension of time for delivery has not been agreed with PURCHASER, then SUPPLIER shall pay to PURCHASER liquidated damages for delay of one per cent (1%) of the price of the GOODS for each full week or part thereof that shall elapse from the delivery date up to and including the date of actual delivery (the "**LIQUIDATED DAMAGES**"). SUPPLIER agrees that any such LIQUIDATED DAMAGES are a genuine pre-estimate of the loss and damage likely to be suffered by PURCHASER as a result of any delay. SUPPLIER's financial liability for LIQUIDATED DAMAGES under this clause shall be limited to five per cent (5%) of the price of the Goods. PURCHASER may terminate the CONTRACT for late delivery in respect of the GOODS after the cap on SUPPLIER's liability, as set out in this clause 3.11, has been reached.
- 3.12. Subject to clause 3.15, if PURCHASER fails to accept delivery of the GOODS within three (3) business days of SUPPLIER's notification to PURCHASER that the GOODS 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 GOODS 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 GOODS were ready; and
- (b) SUPPLIER shall store the GOODS until actual physical delivery takes place, and charge PURCHASER for all related costs and expenses (including insurance).
- 4. INSPECTION AND ACCEPTANCE**
- 4.1. PURCHASER shall be entitled to inspect, test and review the GOODS at all reasonable times throughout the 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 HSE 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 GOODS (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 GOODS within five (5) business days of DELIVERY and notify SUPPLIER if it intends to reject any GOODS 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 GOODS in accordance with clause 4.2 then, after the expiry of five (5) business days from DELIVERY, the GOODS will be deemed to have been accepted by PURCHASER.
- 5. WARRANTY AND DEFECTS CORRECTION REGARDING GOODS**
- 5.1. **Goods Warranty:** SUPPLIER warrants that on DELIVERY and for a period of twelve (12) calendar months from the date of DELIVERY (or such other period specified in the ORDER CONFIRMATION) (the "**WARRANTY PERIOD**") the GOODS 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 design, materials and workmanship.
- 5.2. Subject to clause 5.3, 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 GOODS do not comply with the applicable warranties set out at clause 5.1;
- (b) SUPPLIER is given a reasonable opportunity to examine such GOODS; and
- (c) PURCHASER (if requested to do so by SUPPLIER) returns the GOODS to SUPPLIER's place of business at SUPPLIER's cost;
- then SUPPLIER shall, at its sole option, repair or replace the defective GOODS, or refund the price of the defective GOODS, or part thereof, in full.
- 5.3. SUPPLIER shall not be liable for the GOODS' failure to comply with the warranty 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 (including winding of coils), use and maintenance of the GOODS 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;
- (c) PURCHASER alters or modifies such GOODS without the prior written consent of SUPPLIER;
- (d) The defect constitutes fair wear and tear;
- (e) The GOODS differ from their description or specification as a result of changes made to ensure they comply 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.
- 5.4. **Services Warranty:** SUPPLIER warrants to PURCHASER that the SERVICES will be provided using the reasonable skill and care to be expected of a reputable SUPPLIER experienced in providing services and deliverables the same as or similar to the SERVICES and the GOODS respectively.
- 5.5. Subject to clause 5.6, if:
- (a) PURCHASER gives notice in writing to SUPPLIER within a reasonable time of discovery that part or all of the SERVICES do not comply with the warranty set out at clause 5.5; and
- (b) SUPPLIER is given a reasonable opportunity to examine any equipment which was the subject of the SERVICES,
- then SUPPLIER shall, at its sole option, reperform the part of the SERVICES which are the subject of the notice, or refund the price of such SERVICES in full.
- 5.6. Except as provided in this clause 5, SUPPLIER shall have no liability to PURCHASER in respect of the GOODS' failure to comply with the warranty set out in clause 5.1.
- 5.7. 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.
- 5.8. The warranties in Clause 5.1 shall apply to any repaired or replacement GOODS 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 GOODS, 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 GOODS shall pass to PURCHASER on DELIVERY.
- 7.2. Title to the GOODS shall not pass to PURCHASER until SUPPLIER receives payment in full (in cash or cleared funds) for the GOODS.
- 7.3. Until title to the GOODS has passed to PURCHASER, PURCHASER shall:
- (a) Prior to installation, store the GOODS 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 GOODS;
- (c) Maintain the GOODS 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 GOODS as SUPPLIER may require from time to time.
- 7.4. If before title to the GOODS 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 GOODS 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 GOODS are stored in order to recover them at PURCHASER's cost.

Preformed Windings Limited

General Terms and Conditions for the Supply of Goods and/or Services

8. CHARGES

8.1. In consideration for the provision of the SERVICES and any GOODS, PURCHASER shall pay SUPPLIER the CHARGES.

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.

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 GOODS and/or SERVICES at the same time as payment is due for the supply of such GOODS and/or SERVICES; and
- (b) exclusive of all charges for the packaging, packing, shipping, carriage, insurance and delivery of any GOODS 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 GOODS and/or SERVICES 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 DELIVERY date(s) and/or date(s) for the performance of the SERVICES, quantities or types of the GOODS requested under the CONTRACT, or the specification for such SERVICES and/or GOODS 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 GOODS, as applicable.

9.2. If PURCHASER disputes any invoice, PURCHASER shall notify SUPPLIER of the amount(s) under dispute within ten (10) calendar days of the date of the invoice falling which PURCHASER shall be deemed to have accepted that all sums specified on the invoice are valid, accurate and due for payment. 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 GOODS and/or performance of any SERVICES which are undelivered or unperformed (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 GOODS and/or SERVICES.

11. LIABILITIES

11.1. PURCHASER 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 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 GOODS) 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 GOODS 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 supply of any GOODS (and any component part thereof) and the performance of the SERVICES 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 use the GOODS and/or perform the SERVICES without impairing the suitability of the GOODS or the level of performance of the SERVICES; or (b) modify, reperform or replace the GOODS or SERVICES, as applicable, so that they are rendered non-infringing.

13.6. To the extent that the GOODS are to be 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 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 GOODS and any SERVICES 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 GOODS (or any part thereof) or any SERVICES 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 GOODS and/or SERVICES.
- 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 GOODS and/or SERVICES which are necessary to comply with any APPLICABLE LAWS or which do not materially affect the nature or quality of the GOODS and/or SERVICES. 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.