

# Taylor & Goodman Limited

## General Terms and Conditions of Business

### 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, GOODS and/or the SPARE PARTS (as applicable).

**"CLAIM"** 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 parts described in Clause 2.2.

**"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.

**"GOODS"** means the new goods to be supplied by SUPPLIER, as itemised on the ORDER CONFIRMATION, excluding SPARE PARTS.

**"HSE"** 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 document issued by the SUPPLIER (including any quotation) which references these CONDITIONS and specifies the scope of SERVICES to be performed, and/or the SPARE PARTS and/or GOODS to be supplied (as the case may be), and the corresponding CHARGES.

**"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 the services to be performed by SUPPLIER for PURCHASER, as specified in the ORDER CONFIRMATION, including:

- (a) repair, maintenance, inspection, calibration, installation, uninstallation and commissioning relative to PURCHASER EQUIPMENT; and
- (b) services incidental to the supply of GOODS.

**"SPARE PART"** means the parts, components, modules and/or materials to be supplied by SUPPLIER in the course of performing the SERVICES, as itemised on 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.

**"SUPPLIER"** means Taylor & Goodman Limited, a company incorporated in England & Wales (company no. 02783525) and having its registered office at 75b Loverock Road, Reading, RG30 1DZ.

**"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

1.2.1. All headings in these CONDITIONS are used for convenience only and shall not affect the construction or validity of the CONTRACT.

1.2.2. Any reference herein to a clause shall, unless expressly stated otherwise, be construed as a reference to the relevant clause of these CONDITIONS.

1.2.3. Reference to any document, statute, statutory provision or statutory instrument includes a reference to the document, statute, statutory provision or statutory instrument as amended, extended or re-enacted from time to time.

1.2.4. 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.

1.2.5. Reference to any "person" shall include both living individuals and legal entities such as companies and partnerships.

1.2.6. The word "including" shall be construed to mean "including but not limited to".

### 2. BASIS OF CONTRACT

2.1. The ORDER CONFIRMATION constitutes an offer from SUPPLIER to PURCHASER to supply the GOODS and perform the SERVICES on the basis of these CONDITIONS. SUPPLIER reserves the right to withdraw the offer at any time before acceptance to suit its own convenience. The CONTRACT shall be formed on the earliest of:

2.1.1. PURCHASER explicitly and unconditionally accepting SUPPLIER's offer; or

2.1.2. PURCHASER doing anything which can be reasonably interpreted as being indicating its acceptance of the offer, such as payment of whole or part of the CONTRACT price or delivering the PURCHASER EQUIPMENT to the SUPPLIER.

2.2. The Contract shall consist of the following parts which, in the event of any conflict or inconsistency between them, 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:

2.2.1. the ORDER CONFIRMATION;

2.2.2. these CONDITIONS; and

2.2.3. any other document attached, referred to or specified in the ORDER CONFIRMATION.

2.3. 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.

### 3. SUPPLY OF GOODS

3.1. GOODS shall be delivered to the place of delivery specified in the ORDER CONFIRMATION but, if no such place is specified, GOODS shall be delivered at SUPPLIER's premises, in which case SUPPLIER shall give PURCHASER at least 24 (twenty four) hours notice of the time when the GOODS shall be ready for collection. If the PURCHASER fails to collect the GOODS at the appointed time then SUPPLIER shall be entitled to store the GOODS at PURCHASER's risk pending collection at some alternative time to be agreed with the PURCHASE. PURCHASER's failure or refusal to collect the GOODS on the second or any subsequent delivery attempt shall constitute a material breach of the CONTRACT on its part.

3.2. In the case of GOODS to be delivered at a place other than SUPPLIER's own premises, SUPPLIER shall be entitled to charge PURCHASER for the costs of packing, transportation and insuring the GOODS while in transit.

3.3. GOODS supplied shall, when delivered, be new, be free from defects in design, materials and workmanship, and conform in all material respects to any specification or description given for them by their manufacturer, and be fit for any purpose for which they are customarily used or for which the relevant manufacturer has expressly stated they are suitable.

3.4. PURCHASER shall inspect the GOODS as soon as practically possible following delivery to ascertain whether they conform to the requirements of the CONTRACT. PURCHASER may reject non-confirming GOODS and return them to the SUPPLIER at the SUPPLIER's expenses, provided that:

3.4.1. it first notifies SUPPLIER of its intention to do so within 14 (fourteen) days of delivery;

3.4.2. it complies with SUPPLIER's reasonable requests for information and evidence concerning the alleged non-conformity; and

3.4.3. it does not return the GOODS before being authorised to do so by PURCHASER; and

3.4.4. pending return, it stores the GOODS at its own risk and takes reasonable steps to prevent them from loss, damage, destruction, deterioration and theft.

Following return of the rejected GOODS and having satisfied itself (acting reasonably) that the non-conformity is not the result of act or omissions of PURCHASER or any third party (being a person who is not one of SUPPLIER's suppliers or a member of SUPPLIER GROUP), SUPPLIER shall promptly refund the purchase price for the rejected GOODS. PURCHASER's rights under this Clause 3.4 are supplemental to its rights under Clause 6 (Supplier's Warranties).

### 4. PERFORMANCE OF SERVICES

4.1. In performing the SERVICES, the SUPPLIER shall only be required to perform such tasks and activities, and do such things, as are customarily performed or done by suppliers of services similar to the SERVICES, and such other tasks, activities and things as are expressly stated on the ORDER CONFIRMATION. In the event that SUPPLIER considers that, in order to complete the SERVICES, it would require to carry out additional or alternative tasks and activities, or supply additional or alternative SPARE PARTS, or to spend additional time performing the SERVICES, due to factors or circumstances it could not have reasonably foreseen when the CONTRACT was made or any ORDER CONFIRMATION was issued, then it shall issue an update ORDER CONFIRMATION showing the changes to the CHARGES, the scope of the SERVICES and the impact on the timetable for completion of the SERVICES. In that event, PURCHASER shall be entitled to immediately terminate the contract, provided that it notifies SUPPLIER of its intention to terminate within 24 (twenty four) hours of receiving the updated ORDER CONFIRMATION. If Purchaser does not do so, it shall be deemed to have accepted the revised ORDER CONFIRMATION and the CONTRACT shall be deemed to have been varied accordingly.

4.2. 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.

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

4.3.1. SUPPLIER's representatives are given access to the WORKSITE at the time the SERVICES are to be performed; and

4.3.2. 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.

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

4.4.1. 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 (unless the ORDER CONFIRMATION expressly states otherwise); or
- (b) PURCHASER shall deliver the PURCHASER EQUIPMENT to the WORKSITE specified on the ORDER CONFIRMATION; and

4.4.2. 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

(b) following completion of the SERVICES, PURCHASER shall collect the PURCHASER EQUIPMENT from the WORKSITE.

- 4.5. If PURCHASER fails to accept delivery, reinstallation and/or commissioning (as the case may be) 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:

4.5.1. 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, reinstall and/or commission 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;

4.5.2. SUPPLIER shall store the PURCHASER EQUIPMENT until actual physical delivery takes place, and charge PURCHASER for all related costs and expenses (including insurance); and

4.5.3. 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).

## 5. TIME

- 5.1. 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 or 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, and shall be entitled to an extension of time for performance of, any of its obligations to the extent that same is caused, 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 GOODS or performance of the SERVICES or PURCHASER's failure to comply with its obligations under the CONTRACT.

## 6. SUPPLIER'S WARRANTIES

- 6.1. SUPPLIER warrants that, during the Warranty Period:
- 6.1.1. 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.

6.1.2. GOODS and SPARE PARTS (if any) will be free from defects in design, materials and workmanship.

- 6.2. The "Warranty Period" in respect of:

6.2.1. SERVICES shall be 6 (six) months from the date of completion of such SERVICES

6.2.2. SPARE PARTS shall be six (six) months from the date of completion of the SERVICES; and

6.2.3. GOODS shall be 12 (twelve) months from the date of delivery, or, in each case, such longer or shorter period as may be specified on the ORDER CONFIRMATION.

- 6.3. Subject to Clauses 6.5 and 6.5, in the event of any breach of the warranties in Clause 6.1 PURCHASER shall be entitled to the following remedies:

6.3.1. In the case of breach of the warranty in Clause 6.1.1, to require SUPPLIER to (at SUPPLIER's option) either re-perform the relevant SERVICES or refund such part of the price of such SERVICES as would (in the reasonable opinion of the SUPPLIER) be equitable in the circumstances;

6.3.2. In the case of a breach of Clause 6.1.2, to require SUPPLIER to (at SUPPLIER's option) either repair or replace the defective GOODS.

- 6.4. In order to avail itself of its rights under Clause 6.3, PURCHASER must:

6.4.1. notify SUPPLIER within a reasonable time of becoming aware of the breach and, in any event, within the WARRANTY PERIOD;

6.4.2. comply with SUPPLIER's reasonable requests for information and evidence concerning the nature and circumstances of the breach;

6.4.3. if requested to do so, gives SUPPLIER's representatives a reasonable opportunity to inspect the relevant PURCHASER EQUIPMENT, SPARE PARTS or GOODS (as the case may be), either *in situ* or at SUPPLIER's premises (in the latter case delivering them to SUPPLIER's nominated location at PURCHASER's risk and expense);

6.4.4. not send any PURCHASER EQUIPMENT, SPARE PARTS or GOODS to SUPPLIER before being authorised to do so by PURCHASER; and

6.4.5. pending PURCHASER implementing one of the remedies specified in Clause 6.3, it complies with the PURCHASER's reasonable instructions concerning the PURCHASER EQUIPMENT, SPARE PARTS or GOODS (as applicable) and takes reasonable steps to prevent them from (further) loss, damage, destruction or deterioration.

- 6.5. SUPPLIER shall not be liable for the failure of the SERVICES, SPARE PARTS or GOODS to comply with the warranties set out in clause 6.1 in any of the following circumstances:

6.5.1. the breach arises or is exacerbated because PURCHASER failed to follow SUPPLIER's or the relevant manufacturer's written instructions or recommendations as to the storage, commissioning, installation, use, repair or maintenance of the PURCHASER EQUIPMENT, SPARE PARTS or GOODS or, in the absence of such instructions or recommendations, because the PURCHASER failed to follow good trade practice regarding same;

6.5.2. the breach 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, GOODS and/or SPARE PARTS;

6.5.3. the breach arises as the result of modifications or alterations made subsequent to delivery of the GOODS or SPARE parts, or completion of the SERVICES, by persons not part of the SUPPLIER GROUP;

6.5.4. the breach constitutes fair wear and tear;

6.5.5. the breach is the result of wilful or negligent damage caused by a person other than a member of the SUPPLIER GROUP;

6.5.6. the breach is the result of abnormal storage, environmental or working conditions; or

6.5.7. the breach is the result of incompatibility of the GOODS, SPARE PARTS or PURCHASER EQUIPMENT with other equipment, apparatus or systems to which they may be integrated or attached subsequent to their delivery or completion of the SERVICES, or is the result of the particular calibration or configuration of such equipment, apparatus or systems.

- 6.6. The warranties in:

6.6.1. Clause 6.1.1 shall apply to any SERVICES re-performed in accordance with this Clause 6 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

6.6.2. Clause 6.1.2 shall apply to any repaired or replacement GOODS or SPARE PARTS for 45 (forty five) days from the date of such repair or replacement or until the original Warranty Period for the SPARE PARTS expires, whichever is later.

## 7. CHARGES

- 7.1. As consideration for the provision of the SERVICES, GOODS and SPARE PARTS (as applicable), PURCHASER shall pay SUPPLIER the CHARGES specified on the ORDER CONFIRMATION.

- 7.2. PURCHASER acknowledges and agrees that, in the case of SERVICES (but particularly in the case of repair and maintenance services) it may not be possible for the SUPPLIER to calculate the CHARGES for all SERVICES contemplated by the PARTIES when the CONTRACT is first made. Rather, SUPPLIER may require to inspect PURCHASER'S EQUIPMENT first, as a preliminary SERVICE for which PURCHASE shall pay the relevant inspection CHARGE (if any). Following completion of that inspection, PURCHASER may issue a revised ORDER

CONFIRMATION giving details of the further SERVICES to be performed (including any SPARE PARTS to be supplied) and the corresponding CHARGES for same. The issuing of a revised ORDER CONFIRMATION constitutes an offer by SUPPLIER to PURCHASER to vary the CONTRACT, and such offer shall be deemed to be accepted by PURCHASER upon the earlier of explicit acceptance by PURCHASER or the doing of any act or thing which is indicative of PURCHASER'S desire to proceed with the CONTRACT, as amended (such as payment of any of the CHARGES for the further SERVICES or the delivery of PURCHASER'S EQUIPMENT to SUPPLIER for the purposes of performance of the SERVICES).

- 7.3. SUPPLIER shall be entitled to charge PURCHASER for any expenses reasonably incurred by the individuals whom the SUPPLIER engages in connection with 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.

7.4. The CHARGES are exclusive of all charges for the packaging, packing, shipping, carriage, insurance and delivery of any PURCHASER EQUIPMENT, GOODS and/or SPARE PARTS which PURCHASER shall also be liable to pay.

- 7.5. SUPPLIER may, by giving notice to PURCHASER prior to the scheduled delivery date, increase the price of the SERVICES, GOODS and/or SPARE PARTS to reflect any increase in the cost of the same that is due to:

7.5.1. 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 GOODS or SPARE PARTS requested under the CONTRACT, or the scope or specification for such SERVICES and/or SPARE PARTS as set out in the QUOTATION; or

7.5.2. any delay caused by any instructions of PURCHASER or failure by PURCHASER to give SUPPLIER adequate or accurate information or instructions.

## 8. INVOICING AND PAYMENT

- 8.1. 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, following completion of the SERVICES or delivery of the GOODS.

8.2. 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.

- 8.3. 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:

8.3.1. 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

8.3.2. the SUPPLIER reserves the right to suspend performance of any SERVICES and/or delivery of any GOODS which are unperformed or undelivered (as applicable) at the due date for such payment unless and until such payment is received.

- 8.4. 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).

## 9. TAXES

- 9.1. 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.

## 10. LIABILITIES

- 10.1. 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.

10.2. 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.

10.3. 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.

10.4. Subject to clause 10.3, 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.

10.5. The warranties and representations given in the CONTRACT are the only warranties and representations given by SUPPLIER concerning the SERVICES, GOODS and/or SPARE PARTS (applicable). All other warranties, representations and guarantees (including those which might be implied by law relating to quality, durability, fitness for purpose and performance capabilities) are hereby excluded to the fullest extent permitted by law. Where the CONTRACT provides a remedy for any breach of its terms or other cause of actions, such remedy shall be PURCHASER'S sole remedy for same and all other remedies which might otherwise have been available to PURCHASER are hereby excluded to the fullest extent permitted by law, provided that nothing in this Clause shall prevent PURCHASER availing itself of any non-contractual remedy available to it in order to enforce its rights to any remedy afforded it by the CONTRACT.

10.6. The provisions of this clause 10 shall survive termination or expiration of the CONTRACT.

## 11. PURCHASER SUPPLIED ITEMS, DOCUMENTS AND SPECIFICATIONS

- 11.1. 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.

11.2. 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.

## 12. INTELLECTUAL PROPERTY RIGHTS

- 12.1. 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.

12.2. All IP RIGHTS of SUPPLIER or its SUBCONTRACTORS shall remain the exclusive property of SUPPLIER or its SUBCONTRACTORS, as applicable.

12.3. 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 GOODS or SPARE PARTS provided that it's 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.

### 13. CONFIDENTIALITY

- 13.1. Subject to clause 13.2, 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.
- 13.2. The obligations of confidentiality under this clause 13 shall not apply to any CONFIDENTIAL INFORMATION which the receiving PARTY can prove:
- 13.2.1. was already known to it prior to its receipt from the disclosing PARTY;
- 13.2.2. was subsequently disclosed to it lawfully by a THIRD PARTY who did not obtain the same (whether directly or indirectly) from the receiving PARTY;
- 13.2.3. 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 13 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 13.3;
- 13.2.4. is independently developed by the receiving PARTY without using or referring to CONFIDENTIAL INFORMATION; or
- 13.2.5. is required to be disclosed by a court of law, regulatory authority or tribunal of competent jurisdiction.
- 13.3. Notwithstanding the provisions of clause 13.1, 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.
- 13.4. The provisions of this clause 13 shall survive termination or expiration of the CONTRACT.

### 14. TERMINATION

- 14.1. Without limiting its other rights or remedies, either PARTY may terminate the CONTRACT with immediate effect by written notice to the other PARTY if:
- 14.1.1. 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
- 14.1.2. the other PARTY suffers an INSOLVENCY EVENT.
- 14.2. 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.
- 14.3. 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.
- 14.4. 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 14.4, 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.
- 14.5. Termination of the CONTRACT, however arising, shall not affect any of the PARTIES' rights, remedies, obligations and liabilities that have accrued as at termination.

### 15. FORCE MAJEURE

- 15.1. 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 15.
- 15.2. 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.

### 16. GENERAL LEGAL PROVISIONS

- 16.1. 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.
- 16.2. 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.
- 16.3. 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.
- 16.4. 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.
- 16.5. 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.

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

- 17.1. 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 10.1 and 12.3.
- 17.2. Subject to clause 17.1 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.

### 18. 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.

### 19. CHANGES OR VARIATIONS TO THE CONTRACT

- 19.1. Subject to clause 19.3, 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).

- 19.2. 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.
- 19.3. 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.

### 20. 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.