

## Merc Aerospace Ltd – Terms of Sale

### 1. General

#### 1.1 In These Conditions

- 1.1.1 **Merc Aerospace Ltd** is called “the Company” and the individual, firm, company, or other party with whom the Company contracts is called “the Customer”;
  - 1.1.2 “goods” means the goods, articles and materials which are to be supplied by the Company pursuant to the Contract;
  - 1.1.3 “special goods” means goods made or adapted specifically to the Customer’s specifications;
  - 1.1.4 “Contract” means the contract for the supply of Goods by the Company to the Customer;
  - 1.1.5 “customer specifications” means drawings, designs, data, information, tooling and all memoranda whatsoever provided by the Customer for the production by the Company of the special goods.
- 1.2 In these Conditions the singular includes the plural and vice versa; words importing the masculine gender shall be deemed to include all other genders; and references to persons shall include bodies corporate, partnerships and unincorporated associations.
- 1.3 The headings of clauses are inserted for ease of reference only and shall not affect the construction of these Conditions.
- 1.4 References to clauses are references to clauses of these Conditions.

### 2. Contract

Any quotation or estimate given by the Company is an invitation to the Customer to make an offer only and no order of the Customer placed with the Company in pursuance of a quotation or estimate or otherwise shall be binding on the Company unless and until it accepted by the Company.

### 3. Application and Variation of Conditions

Every Contract howsoever made shall incorporate and be subject to these Conditions and any provision of the Customer’s order or other document which is inconsistent with them shall be of no effect. These Conditions cannot be varied without the prior written agreement of the Company stating the variation and referring expressly to the Condition which is to be varied.

#### 4. Prices

Unless otherwise provided in the Contract:

- 4.1 The price of goods and services is exclusive of Value Added Tax, which will be charged at the rate applicable at the appropriate tax point;
- 4.2 The price of the goods does not include the cost of carriage;
- 4.3 If after the date of the Company's acceptance of order any increase occurs in the costs necessarily incurred by the Company in supplying the goods including but not limited to increases in the cost of goods, materials, labour, or other items including overheads which the Company has to pay or incur in the performance of the Contract, then the amount of any increase in such costs shall be added to the contract price. A certificate of the Company's auditors certifying the amount of such increase shall be conclusive and binding on the Customer and the Company;
- 4.4 Where the price has been quoted in the Company's quotation or estimate based on stated production runs and specific delivery periods, the Company reserves the right to vary the price for the goods should the Customer order different quantities from those stated and/or require delivery over a period;
- 4.5 The cost of any variation or modification in the design, specification, materials or drawings of the goods, or the Customer's specifications in relation to special goods or any development thereof requested by the Customer after the date of the Company's acceptance of order shall, if such variations or modifications are accepted by the Company, be borne by the Customer.

#### 5. Delivery and Risk

- 5.1 Delivery of goods within the United Kingdom shall be made by the Customer at the place specified in the Contract or as subsequently agreed between the parties and the risk in respect of all goods shall pass to the Customer at the time of delivery. If no place for delivery is specified or agreed, delivery shall take place at the Company's works immediately prior to loading for despatch to the Customer. Notwithstanding such delivery, the property in and title to the goods shall not pass to the Customer except as provided in Condition 6. Where the Company does not deliver on its own transport and unless otherwise agreed in writing, the Company shall on behalf of the Customer and at the Customer's expense arrange for the carriage of the goods and the carrier selected by the Company shall be the agent of the Customer. Special notice is directed to the fact that in accordance with the provisions of Section 32 of the Sale of Goods Act 1979 delivery to the carrier will, in such circumstances constitute delivery to the Customer;
- 5.2 Delivery of goods for exportation from the United Kingdom shall be made to the Customer at the destination specified in the Contract or as subsequently agreed between the parties; such goods are sold C.I.F. to the said destination as defined by Incoterms 1980 Edition except that if any relevant provision of Incoterms conflicts with these Conditions these Conditions shall prevail;
- 5.3 The company shall be entitled to make delivery of the goods by instalments and to invoice the Customer for each instalment despatched;

5.4 Where damage to or loss of the goods by instalments and to invoice the Customer the company undertakes (subject as provided below) as its sole discretion to replace or to repair free of charge any goods so damaged or lost in which event the time for delivery of the damaged or lost goods shall be extended for such period as the Company shall reasonably require for such replacement or repair. The forgoing undertaking of the Company is conditional upon:

5.4.1 the Customer giving written notice of such damage or loss with reasonable particulars thereof to the Company and to the carrier (if other than the Company) within 14 days of the receipt of the goods or in the case of total loss within 14 days of receipt of the Company's or the carrier's delivery advise or other notification of despatch; and

5.4.2 the Customer if requested by the Company and at the Customer's cost returning any damaged goods to the Company's works within in one month of receipt thereof;

5.5 Where the goods are not manufactured or supplied directly by the Company and are delivered direct to the Customer by, or collected by the Customer from the manufacturer or supplier the Company shall not be liable for any damage to or loss of the goods whatsoever or whensoever occurring;

5.6 Save as expressly provided in this Condition, the Company shall not have any liability whatsoever for or in connection with any damage to or loss of the goods in transit to the contracted place of delivery.

## 6. Retention of Title

The risk in the goods shall pass from the seller to the buyer upon delivery of such goods to the buyer. However, notwithstanding delivery and the passing of risk in the goods, title and property in the goods, including full legal and beneficial ownership, shall not pass to the buyer until the seller has received in cash or cleared funds payment in full for all goods delivered to the buyer under this and all other contracts between the seller and the buyer for which payment of the full price of the goods thereunder has not been paid. Payment of the full price of the goods shall include the amount of any interest or other sum payable under the terms of this and all other contracts between the seller and the buyer under which the goods were delivered.

## 7. Performance

7.1 Dates or periods for delivery or despatch of goods are approximate and are given for information only. Failure by the Company to comply with any such dates or periods shall not constitute a breach of contract and shall not entitle the Customer to treat the Contract as terminated or to any other remedy against the Company;

7.2 If the Company is prevented or hindered from performing the Contract or any part thereof by any circumstances beyond its reasonable control including (but without limiting the generality of the foregoing) breakdown and failure of plant, machinery or vehicles, late receipt of necessary information from the Customer further performance of the Contract shall be suspended for so long as the Company is so presented or hindered provided that if the performance of the contract is suspended for more then 3 consecutive

calendar months the Customer shall be entitled by notice in writing to the Company forthwith to terminate the contract or to cancel any outstanding part thereof and in such circumstances the Customer shall pay at the Contract rate for all goods supplied and materials used by the Company to the actual date of such termination. The company shall not have any liability to the Customer for any direct or consequential loss or damage suffered by the Customer as a result of the Company's inability to perform its obligations under the Contract by reason of any such circumstances;

- 7.3 Where goods are delivered by instalments or on a call-off basis each such instalment or call-off shall be deemed to be sold or supplied under a separate contract to which these Conditions shall apply as far as the same is applicable and save as provided in Condition 11.3 on default in respect of any one instalment shall affect or prejudice due performance of the Contract as regards any other instalment, and save that the Customer shall remain liable to perform the entire Contract within any time limit stipulated in the Contract for completion of the same;
- 7.4 Where goods are to be supplied or delivered by the Company in accordance with periodic delivery schedules or similar notification of the delivery requirements of the Customer, the Customer shall not be entitled to cancel or vary any such delivery schedule or requirement which is expressed by the Customer to be a firm requirement without the prior written consent of the Company and the Company shall be entitled to reimbursement of any additional costs and expenses incurred or suffered as a result of such cancellation or variation;
- 7.5 If performance of the Contract is suspended at the request of or delayed through default of the Customer including (without prejudice to the generality of the foregoing) lack of, incomplete or incorrect instructions or refusal to collect or accept delivery of the goods for a period of 7 days, the Company shall be entitled to payment at the Contract rate for goods supplied or ordered any other additional costs thereby incurred including storage insurance and interest PROVIDED THAT if the Customer fails to collect or accept delivery of the goods or part thereof within 28 days of written notification from the Company that the goods are ready for collection or delivery, the company shall be entitled (without prejudice to its other remedies under the Contract for such breach) to sell or at its option destroy the goods and to apply the proceeds of sale thereof if sold and the scrap value if destroyed towards payment of all sums due to the Company under the Contract;
- 7.6 The company shall be entitled without the prior approval of the Customer to assign, sub-contract or sub-let the Contract or any part thereof, but the Customer shall not be so entitled without the prior approval of the Company.

## 8. Cancellation by the Customer

The Customer shall have no right under any circumstances to cancel the Contract or any part thereof without the written consent of the Company which the Company shall be entitled to grant upon such terms and conditions as to the payment of compensation by the Customer as it considers appropriate. The Company will not in any circumstances consent to any request for cancellation of

the Contract received by the Company less than 30 days prior to the proposed date of delivery or despatch of the goods.

## 9. Acceptance

The Customer shall be deemed to have accepted the goods and it shall be conclusively agreed that the goods are in accordance with the Contract unless:

9.1 Within 7 days after receipt of the goods and prior to their use or resale the Customer serves on the Company as written notice specifying and defect in the quality or state of the goods are not in accordance with the contract which would be apparent upon careful inspection or by such testing as it is reasonable in all the circumstances for the Customer to undertake or stating why the goods are not otherwise in accordance with the Contract and thereafter provides the Company with a reasonable opportunity of inspecting or testing the goods before they are used or resold.

9.2 If any defect in the quality or state of the goods or other respect in which the goods are not in accordance with the Contract would not be apparent upon careful inspection or reasonable testing the customer serves on the Company written notice of such defect or respect immediately upon its discovery and in any event not more than 6 months after receipt of the goods specifying the matters complained of and affording the company a reasonable opportunity of inspecting the goods before any making good or replacement is undertaken. The Customer shall provide such opportunity notwithstanding that the goods may have been incorporated into the property of a third party.

## 10. References

Each Contract shall if the Company requires be subject to the Company being satisfied as to the Customer's credit references (which unless otherwise stated shall be a credit agency report).

## 11. Payment

11.1 Unless the Contract otherwise provides, the contract price for the goods shall be payable in cash not later than 30 days from the date of relevant invoice;

11.2 Where goods are delivered by instalments, the Customer shall be obliged to pay for each instalment upon the terms set out in sub - paragraph 11.1 of this Condition;

11.3 The time stipulated for payment shall be of the essence of the Contract and failure to pay within the period specified shall entitle the Company upon the expiration the 14 days notice in writing to the Customer to suspend further performance of the Contract pending payment and in addition the Company shall be entitled without liability wholly or partially to cancel the Contract or any other contract between the Company and the Customer without prejudice to any other remedy available to the Company;

11.4 The Company shall be entitled to interest before as well as after judgement on any part of the Contract price not paid by its due date from that date until

actual payment in line with the Late Payment of Commercial Debts Regulations 2013 prevailing from time to time during such period;

11.5 Where the Company specifies that payment will be made by Letter of Credit, the Customer must establish and maintain in favour of the Company an irrevocable and unconditional Letter of Credit with or confirmed by a bank in England satisfactory to the Company. All Bank charges in connection with the Letter of Credit and the opening thereof shall be borne by the Customer. If for any reason the bank is liable to make payment to the Company under any Letter of Credit established for that purpose fails to do so, the Customer shall nevertheless remain liable to pay for the goods supplied.

## 12. Withholding of Payment and Set Off

The Customer shall not be entitled to withhold payment of any amount payable under the Contract to the Company because of any disputed claim of the Customer in respect of defective goods or any other alleged breach of the Contract by the Company nor shall the Customer be entitled to set - off against any amount payable under the contract to the Company any sums which are then due and payable by the Company or in respect of which the Company disputes liability.

## 13. Specifications

13.1 Unless it is expressly stated in the Contract that any figures or statements therein or in the Company's catalogues, sales literature or other documents supplied by the Company as to the performance of the goods are guaranteed to be accurate, such figures and statements shall be approximate and subject to a margin of 10 per cent.

13.2 If in the Contract the Company expressly guarantees the accuracy of such performance, figures or statements (whether subject to specific margins or otherwise) then in the event of the goods after delivery installation or commissioning failing to achieve and comply with the same, the Company shall thereafter be entitled to a reasonable period and to reasonable facilities to enable it to bring the goods up to the guaranteed standard of performance and the contractual time for delivery of the goods or the installation or commissioning thereof shall be extended for such reasonable period.

## 14. Intellectual Property Rights

The Customer acknowledges that all intellectual property rights, including but without limitation, design rights, patents, Copyright and any other industrial property rights whatsoever subsisting in any drawings, documents or other technical data utilised or produced by the Company in performance of the Contract are the property of the Company.

## 15. Tooling

Unless otherwise agreed by the parties in writing all tooling obtained by the Company for the performance of the Contract shall be and remain the property of the Company.



## 16. Testing/Inspection Prior to Delivery

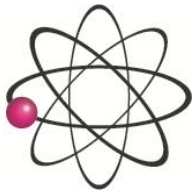
- 16.1 If the Contract provides for testing or inspection of the goods by or for and on behalf of the Customer prior to delivery whether at the company's premises or elsewhere, then upon the Company giving notice of availability of the goods for testing and/or inspection the Customer shall inspect and/or test the goods within 7 days of such notice. If the Customer fails to do so or if within 14 days of the Customer having done so the Customer does not notify the Company that the goods are not in accordance with the Contract specifying matters complained of, then the Customer shall be conclusively deemed to have accepted that the goods are in accordance with the Contract and shall not thereafter be entitled to reject the goods or to claim damages or compensation from the Company on the grounds of anything which such testing and/or inspection revealed or would have revealed if it had been carried out.
- 16.2 The Company shall not be obliged to provide test certificates unless the Customer has requested such certificates a reasonable time in advance of delivery and the Company shall be entitled to charge a reasonable fee for each such certificate.

## 17. Warranty

- 17.1 Where any goods or services (or any part thereof) are shown to the reasonable satisfaction of the Company, to be defective by reason of faulty materials or workmanship or (in the case of goods other than special goods) design, within a period of 6 months from the date of their original despatch or supply (fair wear and tear excepted), the Company shall at its sole option;
- 17.1.1 deliver replacement goods and/or supply further services to the Customer free of charge; and/or
- 17.1.2 refund to the Customer the Contract price of such goods and/or services; and/or
- 17.1.3 require the Customer to retain the goods and/or services and grant to the Customer a reasonable allowance in respect of such defects

Provided that:

- 17.1.3.1 the Customer notifies the Company in writing within fourteen days of becoming aware of any such defect; and
- 17.1.3.2 if so required by the Company all defective goods are first returned to the Company's premises carriage paid by the Customer.;
- 17.1.3.3 the goods have been properly and correctly stored and/or used by the Customer; and
- 17.1.3.4 the liability of the Company under this paragraph (1) shall be accepted by the customer in substitution for and to the exclusion of any other claims for direct loss which the customer has or may have;



17.2 The liability of the company for any claim or claims pursuant to clause 16.1 shall be limited or excluded insofar as any process in the manufacture of Goods or Special Goods is carried out under the supervision of the customer.

17.3 The liability of the company for any claim or claims other than those falling within paragraph (1) above for direct injury, loss or damage made by the customer against the company whether in contract or in tort (including negligence on the part of the Company, its servants or agents) arising out of or in connection with any defect in the goods or any act, omission, neglect or default (whether or not the same constitutes a fundamental breach of the contract or the breach of a fundamental term thereof) of the company its servants or agents in the performance of the Contract (including without limiting the generality of the foregoing, breach of any condition of warranty whether express or implied by statute, common law or otherwise howsoever) shall be limited to the value of the relevant order;

17.4 The company shall not be liable for any claims for economic loss, loss of production, loss of profit, loss of opportunity, loss of bargain or other indirect or consequential injury loss or damage made by the Customer against the Company whether in contract or in tort (Including negligence on the part of the company its servants or agents) arising out or in connection with any such defect, act, omission, neglect or default referred to in sub – clauses (2) and (3) of this Clause;

**17.5 Nothing in these Conditions shall:**

- 17.5.1 limit or exclude the liability of the Company in respect of death or personal injury resulting from negligence of the Company, its employees or agents; or
- 17.5.2 limit or exclude the respective rights and remedies of the Company and the Customer under the Unfair Contract Terms Act 1977; or
- 17.5.3 exclude the conditions and warranties implied by Section 12 of the Sale of Goods Act 1979 and, where the Customer deals as a consumer, the conditions implied by section 13 to 15 inclusive of the said Act and by Sections 3 and 4 of the Supply of Goods and Services Act 1982.

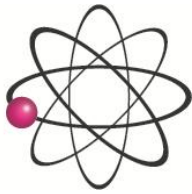
**18. Special Goods**

18.1 The company reserves the right to supply 10 per cent. more or less than the exact quantity of special goods ordered such overs and shortages to be charges for or deducted pro rata;

18.2 The Company shall be entitled to reject any materials supplied or specified by the Customer in its judgements considers unsuitable. Additional costs incurred by the company if such materials are judged to be unsuitable, will be charged the Customer. Quantities of material supplied by the Customer shall be adequate to cover normal spoilage;

18.3 The Company accepts no responsibility for the accuracy or suitability of the customer's specification and the Company shall be entitled to accept the same as being without defect. The Company shall have no responsibility for the quality of fitness of special goods for any particular purpose whether or not such purpose is made known to the Company and the conditions implied by section 13 to 15 inclusive of the Sales of Goods Act 1979 and by Sections 3





to 5 inclusive 7 to 10 inclusive and 13 to 15 inclusive of the Supply of Goods and Services Act 1982 shall be excluded. The Customer undertakes to indemnify the Company and to keep the Company fully and effectually

indemnified against all actions, proceedings, claims, costs, loss, damage or expenses whatsoever whether arising in contract or in tort which the Company may suffer or incur as a result of any defect in the special goods whether due to quality design fitness for purpose or in any other way whatsoever unless the same is due directly to the negligence of the company, its employees or agents;

18.4 All losses whether direct, indirect or consequential incurred by the Company from any delay arising as a result of the variation or modification to the customer specifications shall be borne in full by the Customer.

18.5 The Customer represents and warrants to the company that neither the special goods nor the manufacture thereof by the Company will infringe any patent, copyright, registered design, design right or any other proprietary right of any third party and the Customer further undertakes to indemnify the Company and keep the Company fully and effectually indemnified against all actions, proceedings, claims, costs, loss, damage or expense what so ever in respect of any infringement by the Company of any patent, copyright, design, trademark or any other proprietary right which the Company may suffer or incur in connection with the execution and performance of the Contract and such indemnity shall extend to any amount including costs paid by the Company (upon legal advice) in settlement of any claim out of Court.

## 19. Customer's Property

All property supplied to the Company by or on behalf of the Customer which is held by the Company for the purposes of the Contract or in transit to or from the Customer, shall be deemed to be entirely at the Customer's risk and the Company shall not be liable for any loss of or damage to such property whilst in possession of the Company or in transit as afore said unless such loss or damage is due directly to the negligence of the Company, its employees or agents. In no circumstances whatsoever will the Company be liable for any consequential loss or damage arising there from. The Customer shall insure all such property for all risks.

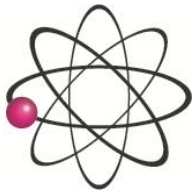
## 20. Lien

Without prejudice to any other rights and remedies which the Company may have under the Contract, the Company shall in respect of all debts of the Customer to the Company have a general lien on all goods and property belonging to the Customer in its possession (whether worked on or not) and shall be entitled upon the expiration of fourteen days notice to the customer, to dispose of such goods or property as it thinks fit and to apply any proceeds of sale thereof towards the payment of such debts.

## 21. Health and Safety

21.1 The attention of the Customer is drawn to the provisions of section 6 of the Health and Safety at Work Act 1974. The Company will make available such information as is appropriate relating to the goods and materials supplied as





is in its possession to ensure that as far as is reasonably practicable they are safe and without risk to health when properly used.

- 21.2 The Customer hereby undertakes pursuant to Section 6(8) of the Health and Safety at Work Act 1974 to take such measures as are communicated in writing to the Customer by the Company and to take such other steps as are sufficient to ensure, so far as is reasonably practicable, that the goods will at all times be safe and without risk to health when properly used. The goods and materials shall not be regarded as properly used when they are used without regard to any relevant information or advice relating to their use which has been communicated to the Customer pursuant to this clause;
- 21.3 The Company shall not be liable to the Customer in any civil proceedings brought by the Customer against the Company under any Health and Safety at Work Act 1974 where such exclusion of liability is permitted by law;
- 21.4 The Customer shall indemnify and keep indemnified the Company in respect of any liability, monetary penalty or fine in respect of or in connection with the goods or services incurred directly or indirectly by the Company under the Health and Safety Regulations made pursuant to the Health and Safety at Work Act 1974 or any regulations orders or directions made thereunder.

## 22. Product Liability

- 22.1 The Customer shall be responsible for compliance without charge to the Company with any statute, Order in Council, Decree, Resolution, Bye – law or any other requirement for the time being in force in any country which the Company shall provide the goods which relate to product liability.
- 22.2 The Customer shall fully indemnify and keep indemnified the Company from all claims, proceedings, actions, costs, damages and losses resulting from the failure to comply as aforesaid in sub-paragraph 21.1 of this Condition or the assembly, processing, treatment or use of the goods by the Customer.

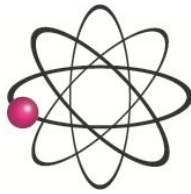
## 23. Licences

- 23.1 The Company shall obtain at the expense of the Customer any licences necessary to export any of the goods from the United Kingdom. The Company shall not be liable for any direct, indirect, economic and/or consequential loss resulting from its failure to obtain the grant or renewal of any such licence.
- 23.2 The customer shall be responsible for obtaining any licences necessary to import such goods into the country of destination and any necessary renewal thereof, and shall send copies to the Company upon request. The Customer shall reimburse the Company in respect of any loss whether direct , indirect, economic or consequential resulting from a failure by the Customer to obtain any licence or renewal thereof.

## 24. Limitation of Liability

- 24.1 Nothing in these Conditions shall limit or exclude the Company's liability for:





- 24.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 24.1.2 fraud or fraudulent misrepresentation;
  - 24.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - 24.1.4 defective products under the Consumer Protection Act 1987, as referred to in clause 17.1.
- 24.2 Subject to clause 24.1:
- 24.2.1 the Company shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - 24.2.2 the Company's total liability to the Customer in respect of all other 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 100% of the value of the Goods.

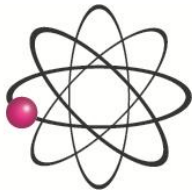
## 25. Indemnity

- 25.1 Where any part of the process of manufacture of the goods is carried out under the supervision of the Customer the Customer shall indemnify and keep fully indemnified the Company against all losses, expenses, liabilities, claims, costs whether arising directly or consequential upon such supervision.
- 25.2 Where such supervision by the Customer requires entry upon the Company's premises;
- 25.2.1 the Customer undertakes that it and its respective workmen will commit no act or omission upon the Company's premises which will render the Company liable as occupier to any person either at common law or by virtue of any statute in respect of any injury, loss or damage that person may sustain and the Customer and its workmen will authorise and observe all statutory provisions and regulations and the rules of the Company relating to the safety of persons using the Company's premises;
  - 25.2.2 the Customer shall indemnify the Company against all actions, proceedings, claims and demands by any person in respect of any damage to property or injury to or death of persons arising out of or in connection with the acts or omissions of the Customer, its employees or agents whilst on the Company's premises.

## 26. Insolvency and Breach of Contract

If any one or more of the following events occur, are threatened or in the opinion of the company are reasonably likely to occur:

- 26.1 The customer shall commit any breach of the contract and shall fair to remedy such breach (if capable of remedy) within a period of thirty days from receipt of notice in writing from the company, requesting such breach to be remedied; or



- 26.2 Any sum due under this or any other Contract is not paid within thirty days of its due date; or
- 26.3 Any distress or execution is levied upon any of the goods or property of the Customer; or
- 26.4 The Customer (or where the Customer is a partnership thereof) offers to make any arrangements with or for the benefit of its or his creditors or a petition is presented or an order is made for the Customer to become bankrupt; or
- 26.5 The Customer (being a limited company) has an Administrative Receiver or a Receiver and Manager appointed of the whole or any part of its undertaking property or assets or a petition or an order is made or a resolution is passed or analogous proceedings are taken for the winding up of the Customer or for the appointment of an administrator thereof;
- 26.6 If a secured lender to the Customer takes any steps to obtain possession of the property on which it is secured or otherwise to enforce its security;
- 26.7 If the customer has failed to provide any Letter of Credit or other security required by the Contract provided that in such event such rights of termination shall apply only in regard to the particular contract in respect of which the Customer has so failed;
- 26.8 If the Customer shall suffer any procedure analogous to those set in sub-paragraphs 26.3 to 26.6 inclusive of this Condition in the country in which it is constituted;
- 26.8.1 The Company shall thereupon be entitled without prejudice to its other rights hereunder, forthwith to suspend further performance of the Contract and of any other contract between the Company and the Customer until the default has been made good or to determine the Contract or any other contract between the Company and the Customer or any unfulfilled part thereof or at the Company's option to make partial supplies of goods and or services.
- 26.8.2 Notwithstanding any such termination, the Customer shall pay to the Company at the Contract rate for all work done, materials used and goods delivered up to and including the date of termination and shall in addition indemnify the Company against any resulting loss, damage or expense incurred by the Company in connection with the supply or non-performance of the Contract including the cost of any material, plant or tools used therefore and the cost of labour and other overheads including a percentage in respect of profit.

## 27. Severance

If at any time one or more of these Conditions (or any paragraph, sub-paragraph or any part thereof) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted here from and the validity and/or enforceability of the remaining provisions of these Conditions shall not in any way be affected or impaired thereby.

## 28. Waiver

The rights and remedies of the Company under the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance



or extension of time by the Company nor by any failure or delay by the Company in asserting or exercising any such rights of remedies.

## 29. Notices

Any notice given or made hereunder shall be given by email, facsimile transmission or in writing and sent by hand or first class pre-paid post and addressed to the relevant party at the respective address set out in the order or such address as the parties made by notice in writing to the other.

## 30. Law

These conditions and each and every Contract made pursuant thereto shall be governed by and construed in all respects in accordance with the Laws of England.

## 31. Jurisdiction

The parties submit themselves to the exclusive jurisdiction of the English Courts except in such circumstances where the Country in which the Customer is constituted is not a party to any agreement within the United Kingdom for the reciprocal enforcement of judgement when all disputes in connection with these conditions shall be finally settled under the Rules of Conciliation and arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. Such arbitration shall take place in London.