

Merc Aerospace Ltd - Terms for the Purchase of Goods and Services

1. Interpretation

1.1 The definitions and rules of interpretation listed below apply in these general terms of purchase.

"Buyer" means **Merc Aerospace Ltd** (unless otherwise stated on the Purchase Order), and their successors and assigns.

"Contract" means the Purchase Order (PO), the general terms of purchase, any technical specifications, standards, programmes, drawings and models referred to in the PO, and the Seller's acceptance of the PO.

"Goods" means any goods agreed in the Contract to be bought by the Buyer from the Seller (including any part or parts of them), including any accompanying or relevant documentation that is applicable to the Goods, including goods required to be delivered in performance of the Services and goods returned to the Seller for repair or rework in accordance with the Contract, as further described in the Specification, if any.

"Services" means any services or sub-contract operations agreed in the Contract to be bought by the Buyer from the Seller, including any accompanying or relevant documentation that is applicable to the Service, and as set out in the Specification or to be rendered in connection with the delivery of the Goods to be delivered.

"Purchase Order" or PO, means the Buyer's written (including electronic) instruction to the Seller to supply the Goods and/or Services, incorporating these purchasing terms (including the schedules) and the Specification.

"Specification" the Specification or scope attached to or clearly referred to in the Purchase Order, to include all documents, standards and drawings therein referred to.

Representative: in respect of the Buyer and the Seller, the persons identified on the Purchase Order as the Buyer's and the Seller's representative or contact respectively for the purpose of the Contract or such other person(s) notified to the other from time to time.

Seller: the person, firm or company identified on the Purchase Order as the provider of Goods and/or Services.

Seller Party: any of (a) the Seller, (b) any individual employed or engaged by any other Seller Party and (c) any sub-contractor, agent, delegate, representative or associated company of the Seller which, with the prior approval of the Buyer, is engaged in the performance of the Seller's obligations under the Contract.

2. APPLICATION OF TERMS

2.1 Conditions 1 to 19 inclusive apply to all Contracts.

2.2 Subject to the Buyer notifying the Seller in writing and in explicit terms that (a) these conditions do not apply to the Contract or (b) the Buyer agrees to be bound to specified variations to these conditions for the purposes of the Contract, these conditions are the only conditions upon which the Buyer contracts with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions. In the event of any conflict between these conditions and a Purchase Order the Purchase Order will prevail.

2.3 Each Purchase Order which the Buyer sends to the Seller shall be deemed to be an offer by the Buyer to buy Goods or Services subject to these conditions and no Purchase Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by commencing to fulfil the Purchase Order, in whole or in part accepts the offer.

2.4 No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of a Purchase Order, specification or other document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

3. WARRANTIES

3.1 The Seller warrants that the Goods and the Services shall:

(a) not be changed without the prior written consent of the Buyer;

(b) be of the best available design, of the best quality and workmanship without fault or defect (including latent defect),

(c) in the case of the Services, be performed with reasonable care and skill, in accordance with generally recognised commercial practices and standards for similar services;

(d) conform to the Purchase Order (including, but not limited to, the Specification, which the Seller warrants to be accurate and complete in all material respects and not misleading);

(e) in the case of the Goods, to the extent they comprise parts and components which according to the Specification or drawings must be identical, such parts and components shall actually be interchangeable and the fitting surfaces of all parts and components which come into consideration for replacement shall be finished in accordance with any tolerances stated in the Specification or on the drawings;

(f) in the case of the Goods, be complete and fully operational and shall be delivered with all parts (and also those parts that are not specified in the Purchase Order but which are required for proper operation and also including the usual safety devices, special tools etc.);

(g) be accompanied by all appropriate information, warnings, instructions and documentation in relation to the safe use, handling, storing, operation, consuming, transportation and disposal of any Goods or parts or materials, in particular in relation to hazardous materials which will be clearly identified to the Buyer;

(h) be free of CFC's, asbestos, halons and radiation above natural background levels unless specifically agreed by the Buyer;

(i) comply with any applicable national and international quality assurance standards from time to time published under which the Seller is approved; and/or as reasonably requested by the Buyer; and

(j) in the case of the Goods, when delivered, be accompanied by a delivery note which shows, inter alia, the Purchase Order number, date of Purchase Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

3.2 The Seller warrants that the Goods and Services shall conform with all Laws applicable to: (a) such Services including in relation to health, safety and environmental standards; or

(b) such Goods as regards the design, manufacture, quality, packaging, transportation, delivery, labelling, health, safety and environmental standards and use of such Goods which are in force at the time of supply.

3.3 The Seller warrants that it (and each other Seller Party) shall at all times and at its and their own expense:

(a) maintain all necessary licenses and consents and ensure that they do not do or cause to be done any act or omission that may cause the Buyer to breach any licenses, consents;

(b) adopt good ethical behaviour and comply with all applicable Law (including but not limited to anti-corruption legislation) and ensure that they do not do or cause to be done any act or omission that may cause the Buyer to breach any applicable Law (including but not limited to anti-corruption legislation);

(c) adopt safe working practices and at the proper time supply and install within the original contract price such guards and safety devices as may be necessary to comply with the provisions of all health and safety Laws and shall not in the performance of the Contract in any manner endanger the safety of or unlawfully interfere with the convenience of any other person, including employees and/or contractors of the Buyer;

(d) ensure that, in performing its obligations under the Contract, it does not cause any disturbance or damage to the industrial operations and property at the relevant site;

(e) comply with and ensure that they do not do or cause to be done any act or omission that may cause the Buyer or any of its employees to breach the Buyer's conditions in relation to any relevant site (including but not limited to health and safety conditions, safety management systems, safety cases, hygiene policies, security policies) and the Buyer's code of conduct, code of ethics, gifts and hospitality policy and guidance on travel and expenses made available to the Seller from time to time;

(f) confirm the accuracy of the information provided as part of any Buyer contractor approval process or in accordance with any Buyer procurement principles, continue for the term of the Contract to comply with the requirements of any Buyer contractor approval process and/or procurement principles and promptly notify the Buyer of any changes to the details provided during or subsequent to any such Buyer contractor approval process or in accordance with any Buyer procurement principles;

(g) assist the Buyer (and any person nominated by the Buyer) in the investigation of any accident or incident or the resolution of any dispute, which assistance shall include, but not be limited to, making personnel available for interview, providing access to documents and records, providing information reasonably requested by the Buyer and assisting in any notification required to be made to any regulatory authorities;

(h) notify the Buyer as soon as it becomes aware of any breach of Laws or any health and safety hazard or issue which arises in relation to the Goods or Services (which notification shall not release the Seller from any liability and/or obligations in respect of such breach, hazard or issue);

(i) co-operate with the Buyer in all matters relating to the Services;

(j) subject to the prior written approval of the Buyer's Representative, appoint or, at the request of the Buyer, replace without delay the Seller's Representative, who shall have authority under the Contract contractually to bind the Seller on all matters relating to the Contract; and

(k) notify the Buyer's Representative promptly after it becomes aware that the Buyer is not or may not be complying with any of the Buyer's obligations, provided that the Seller shall not be entitled to rely on such notice as relieving the Seller's performance under the Contract, save to the extent that it actually restricts or precludes performance of the Seller's obligations.

3.4 The warranties given under this condition 3 shall survive any performance, acceptance or payment pursuant to the Contract and shall be extended to any repaired or replacement Goods or substituted or remedial services provided by the Seller.

3.5 The Seller undertakes that it (and each other Seller Party) shall at all times allow the Buyer or any Buyer Representative to have access to the Seller or any Seller Party's (1) premises, (2) information and (3) personnel to allow the Buyer and/or the Buyer Representative to audit compliance with the warranties given under each of condition 3.3(b), (e), (f) and (g).

4. PROGRESS AND INSPECTION

4.1 Where the Seller is of the opinion that it will be unable to meet its obligations under the Contract or that it will only be able to meet its obligations in part, or too late, it shall promptly notify the Buyer's Representative accordingly in writing, specifying the conditions and circumstances causing such failure or delay. This obligation also arises if the source of the problem lies with the Buyer. Where the Seller fails to so notify the Buyer's Representative, even if the Buyer should have been made aware of the existence of those conditions and circumstances, no reliance by the Seller on the conditions and circumstances referred to above can exclude, reduce or mitigate the Seller's obligations under the Contract.

4.2 On request made by the Buyer, the Seller shall prepare a manufacturing schedule or a progress report, and send copies of the schedule or the report to the Buyer. These schedules or reports shall specify:

- (a) in the case of the Goods, the progress of the drawing operation, the material supply, the operations in the workshop and the delivery date; and
- (b) in the case of the Services, the commencement date, timetable and status of the Services, details of the planned workforce, the storage and assembly areas and other resources required and the period for which they are required; and
- (c) in each case, such other information as the Buyer may request.

4.3 At any time prior to delivery of the Goods to the Buyer or completion of the Services, the Buyer (or its nominee) shall have the right to inspect and test the Goods or inspect the work being carried out in performance of the Services. If at the date of the inspection the Goods are located or the Services are being performed at the premises of the Seller, any Seller Party or its, or their associated companies or sub-contractors, the Seller shall procure that the Buyer or its nominee has access on reasonable notice and shall ensure that the inspectors shall receive such information and assistance as they reasonably request in relation to their inspection or testing of the Goods or Services.

4.4 If the results of such inspection or testing cause the Buyer to be of the opinion that the Goods and/or Services do not conform or are unlikely to conform with the Purchase Order or to any Specification and/or patterns supplied or advised by the Buyer to the Seller or that the Goods and/or Services may not be delivered to time, the Buyer may, at its option:

- (a) inform the Seller in writing, following which the Seller shall immediately take such action as is necessary to ensure conformity;
- (b) reject the Goods or Services; or
- (c) require and witness further testing and inspection.

4.5 Notwithstanding any such inspection or testing or any statement made by any inspector, the Seller shall remain fully responsible for the Goods and the Services and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.

5. DELIVERY AND QUANTITY

5.1 The Goods shall be delivered in accordance with Incoterms DDP (unless otherwise agreed by the Buyer) at the place and time specified in the Purchase Order or to such other place of delivery as is agreed by the Buyer in writing prior to delivery of the Goods. In addition the Seller shall off-load the Goods at its own risk as directed by the Buyer. Unless otherwise stipulated by the Buyer in the Purchase Order, deliveries shall only be accepted by the Buyer in normal business hours.

5.2 The Seller shall deliver the quantity specified in the Purchase Order.

5.3 The Goods shall be packaged by the Seller so as to ensure that they will be in good condition upon arrival at their destination. If the Seller requires the Buyer to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to the Buyer and any such packaging material shall only be returned to the Seller at the cost of the Seller. Such material shall be marked with the Seller's name and address.

5.4 Where the Buyer agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Failure by the Seller to deliver any one instalment shall entitle the Buyer at its option to treat the whole Contract as repudiated.

5.5 If the Goods are delivered to the Buyer in excess of the quantities ordered the Buyer shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be available for collection at the Seller's expense within 3 months. Thereafter the Buyer may dispose of such excess Goods at the Seller's expense.

6. CONSEQUENCES OF DEFAULT

6.1 Without prejudice to the Buyer's other rights under the Contract or otherwise and subject to condition 6.2 below, if:

- (a) the Seller breaches any of the warranties set out in condition 3.1; or
- (b) the Seller breaches any other provision of the Contract not referred to in condition 6.1(a) above or any of the Goods or the Services otherwise fail to comply with the provisions of the Contract;

the Buyer shall where practicable first seek to meet and discuss the situation with the Seller as soon as possible, but reserves the right to avail itself of any one or more of the remedies set out in condition 6.3 at its discretion, whether or not any part of the Goods or the Services have been accepted by the Buyer.

6.2 Where condition 6.1(a) applies, the remedies set out in condition 6.3 shall only be available where the Buyer notifies the Seller of the failure of the Goods or Services to comply with the Contract or the breach of warranty prior to the latest of:

- (a) 12 months after the date of acceptance of the relevant Goods or Services;
- (b) where the Seller has repaired or replaced Goods or provided substitute Services pursuant to condition 6.3, 12 months after the date of acceptance of such repaired or replacement Goods or substitute Services; or (c) where after the expiry of the relevant period referred to in condition (a) or (b) above of this condition 6.2 it shall appear that condition 6.1(a) applies and the Buyer would not reasonably have been expected to notice that fact within the relevant 12 month period referred to in condition 6.1(a), six years after the date of acceptance of the original Goods or Services, repaired or replacement Goods or substitute Services as applicable.

6.3 The remedies available to the Buyer following the occurrence of one of the events referred to in condition 6.1 are:

- (a) to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that the Seller shall immediately pay to the Buyer a full refund for the Goods so returned;
- (b) to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or Services or to supply replacement Goods or substitute Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled within a reasonable period specified by the Buyer;
- (c) to refuse to accept any further deliveries of the Goods or subsequent performance of the Services which the Seller attempts to make, in each case without any liability to the Seller;
- (d) to carry out or procure that some other person carries out at the Seller's expense any work necessary to make the Goods and/or Services comply with the Contract (including but not limited to freight, disassembly and re-assembly);
- (e) if the Seller (or any other Seller Party) breaches a warranty set out in condition 3.2 or 3.3, to notify (in writing or otherwise) the Seller of such breach and instruct the Seller to suspend performance of its obligations under this Contract with immediate effect and to take such steps as the Buyer may direct in order to remedy such breach at the Seller's expense;
- (f) to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract;
- (g) to obtain substitute goods or purchase substitute services elsewhere and recover from the Seller any expenditure reasonably incurred by the Buyer in obtaining the goods or services in substitution from another seller;
- (h) in the event that the Seller or any Seller Party is in breach of condition 3.3 (b), to terminate forthwith the Contract in whole or in part or to rescind the Purchase Order, in each case without any liability to the Seller; and
- (i) in the event of any failure by the Seller to fulfil its obligations under condition 6.3(a) to (h) or to the extent there is any other material or persistent default by the Seller of its obligations under the Contract, which being capable of remedy are not remedied within 14 days of notice of such default, to terminate the Contract in whole or in part or to rescind the Purchase Order, in each case without any liability to the Seller.

6.4 If the Buyer exercises its right under condition 6.3(d), the Buyer shall have the free use of all tools, equipment, stores and other things (whether the same be owned, hired or licensed by the Seller or a Seller Party) that may be at any time used in connection with the Services, without being responsible to the Seller for fair wear and tear and to the exclusion of any right of the Seller over the same.

6.5 If the Purchase Order includes a provision requiring the Seller to pay an amount of liquidated damages if it fails to achieve a delivery date, performance level, output or standard, the Seller shall pay such amount as liquidated damages and not as a penalty.

6.6 If the Buyer exercises its rights under conditions 6.3(b), (d) and/or (e) above in respect of Goods which do not, in the Buyer's opinion, meet the requirements specified in the Contract, the Seller grants to the Buyer the right to utilise the relevant Goods until such time as they meet those requirements.

7. PRICE

7.1 The price of the Goods and/or the Services shall be stated in the Purchase Order and unless otherwise agreed in writing by the Buyer shall be exclusive of value added tax but inclusive of all other charges.

7.2 No variation in the price nor extra charges shall be accepted by the Buyer unless formally agreed in writing.

8. PAYMENT AND INVOICING

8.1 Payment of undisputed amounts shall, unless otherwise set out in the Purchase Order, be made on the last day of the second calendar month after the month of delivery or performance provided the invoice quotes the Buyer's Purchase Order number and such invoice reaches the Buyer by the 5th of the month following the month of delivery.

8.2 Without prejudice to any other right or remedy, the Buyer reserves the right to set off any amount owing at any time from the Seller to the Buyer against any amount payable by the Buyer to the Seller.

8.3 If any undisputed sum under the Contract is not paid when due then, without prejudice to the parties' other rights under the Contract, provided the Seller issues an invoice that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 2% per annum over Bank of England base rate. The Seller is not entitled to suspend deliveries of the Goods or performance of the Services as a result of any sums being outstanding.

9. INDEMNITY

9.1 The Seller shall keep the Buyer and any of its agents, contractors, customers or associated companies indemnified in full against all direct, indirect or consequential losses and/or liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), increased cost, loss, damages, injury, claims, charges, demands, actions, costs and expenses (including legal and other professional fees and expenses) (together the "Losses") awarded against or incurred or paid by the Buyer and any of its agents, contractors, customers or associated companies as a result of or in connection with:

- (a) the Seller's (or any other Seller Party's) negligence, default or breach of contract;

- (b) defective workmanship, quality or materials; and
 - (c) any claim made against the Buyer in respect of any Losses sustained by the Buyer's employees, agents, contractors or by any customer or third party to the extent that such Losses were caused by, relate to or arise from the Goods or the provision of the Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller or any other Seller Party.
- 9.2 The liability of the Seller to the Buyer under condition 9.1(a) and (b) above (but not under any other condition including without limit conditions 14.4 and 14.5) shall be limited to the amount of £10m. This limitation shall not apply to any Losses;
- (a) caused wilfully by or by material breach of Contract on the part of the Seller or any other Seller Party; or
 - (b) arising out of personal injury or death to any person; or
 - (c) caused solely by the negligence or wilful default of the Seller.

10. RISK/PROPERTY

10.1 The Goods shall remain at the risk of the Seller until delivery to the Buyer is complete at the place or places and in the manner specified in the Purchase Order when, subject to condition 10.3 below, risk in the Goods shall pass to the Buyer.

10.2 Ownership of the Goods shall, subject to condition 10.3 below, pass to the Buyer on the earlier of:

- (a) the time at which the Goods become identifiable as the Goods to be delivered to the Buyer under the Contract;
- (b) completion of delivery as described in condition 10.1 above; and
- (c) payment of the price or any instalment of the price.

10.3 Where the Buyer rejects any Goods in accordance with these conditions, such Goods shall be deemed to have remained the property and risk of the Seller at all times.

10.4 Goods supplied by the Buyer to the Seller for servicing or repair shall remain from the time of collection or receipt until re-delivery at the place or places and in the manner instructed by the Buyer at the absolute risk of the Seller in regard to any loss or damage.

11. INSURANCE

11.1 During the term of the Contract, the Seller shall maintain in force with a reputable insurance company insurance which is adequate, in the Buyer's reasonable opinion, to cover the Seller's full liability under the Contract and in any event:

- (a) public liability insurance for not less than £10,000,000 for any one incident;
- (b) products liability insurance for not less than £10,000,000 for any one incident; and
- (c) employer's liability insurance for a minimum limit of £10,000,000.

11.2 The Seller shall, on the Buyer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium. Such right of inspection shall not discharge the Seller in any way from its duty to comply with its obligations hereunder. Such insurances should be extended to provide an indemnity to the Buyer as principal.

11.3 The Seller shall at his own cost insure:

- (a) all Goods up to the point when delivery is complete in accordance with condition 10; and
- (b) all Goods delivered to him by the Buyer for repair or servicing from the time of collection or receiving them until re-delivery in accordance with the instructions of the Buyer, in each case for their replacement value against loss, damage or destruction resulting from any insurable risk which can be reasonably contemplated as affecting the Goods.

12. CONFIDENTIALITY

The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Buyer or its agents or sub-contractors and any other confidential information concerning the Buyer's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Buyer and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality.

13. THE BUYER'S PROPERTY

13.1 In conditions 13 and 14 "**Buyer's Materials**" means all drawings, materials, equipment, patterns, castings, tools, dies, moulds, specifications, software, codes, calculations and other data which are:

- (a) supplied by the Buyer to the Seller;
- (b) not so supplied but used or created or developed by the Seller specifically for the purposes of the manufacture of Goods or the provision of Services to the Buyer or its affiliates; or
- (c) delivered to the Buyer pursuant to this condition 13.

13.2 The Buyer's Materials shall at all times be and remain the exclusive property of the Buyer but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Buyer at the Buyer's request (and, in any event, immediately on termination of the Contract) and shall not be

disposed of other than in accordance with the Buyer's written instructions, nor shall such items be copied or used or disclosed to third parties, otherwise than as authorised by the Buyer in writing in advance.

13.3 To allow the Buyer to assemble, use, maintain, enhance and repair the delivered Goods and all parts and components thereof, and to enable the Buyer to purchase or have made such parts and components, the Seller shall, as soon as possible after the delivery date, and at the Seller's cost, provide the Buyer with all drawings, calculations, specifications and other data prepared for the purposes of the Contract or otherwise needed for the assembly, use, maintenance, enhancement and repair of the Goods including software codes and source codes in respect of software developed for the purposes of the Contract (which shall include the codes of all programmes necessary for the proper functioning of those codes) and the relevant CE or other equivalent declaration of conformity in duplicate (or in that number of copies specified in the Purchase Order), together with a set of complete, fully reviewed and (by means of microfilm or otherwise) properly reproducible tracings and CAD-drawings, showing the actual condition of the various Goods, parts and components included in the delivery, as well as with two clear prints of these tracings and CAD-drawings. The drawings must include all details specified by the Buyer. In the case of commodities a specification of their serial and type numbers will be sufficient.

13.4 In respect of software supplied under (but not developed specifically for the purposes of) the Contract, the Seller shall put the relevant software codes and source codes (which shall include the codes of all programmes necessary for the proper functioning of those codes) into an escrow arrangement approved by the Buyer to allow the Buyer access to such codes in agreed circumstances.

13.5 The Seller shall, prior to using any Buyer's Materials supplied by the Buyer, inspect those items, which inspection shall include a check of consistency. The Seller shall immediately notify the Buyer of any variations, errors, and/or deficiencies, failing which the Seller shall be liable for any damage resulting from such variations, errors, and/or deficiencies.

13.6 If the Seller fails to fulfil its obligations under condition 13.2, the Buyer may enter the Seller's premises and take possession of the Buyer's Materials. Until they have been returned or repossessed, the Seller shall be solely responsible for their safe keeping.

14. INTELLECTUAL PROPERTY

14.1 The Buyer retains any and all intellectual property rights in the Buyer's Materials and the Buyer grants a non-transferable, non-exclusive, royalty free licence to the Seller to use such intellectual property rights only to the extent necessary to provide the Goods or perform the Services and such licence shall terminate immediately upon termination of the Contract or upon earlier return of the Buyer's Materials to the Buyer.

14.2 Pursuant to condition 13 to the extent that such intellectual property rights do not automatically vest in the Buyer, the Seller assigns to the Buyer all intellectual property rights in the Buyer's Materials which have been used, created or developed for the purposes of the Contract.

14.3 The Seller grants to the Buyer (and to the extent the Seller is not able to grant the licence itself, shall procure the grant of) a non-transferable, non-exclusive, royalty free licence (with the right to sub-licence) of such intellectual property rights to enable the Buyer to use and enjoy the Goods or the Services including without limitation to allow the Buyer freely to utilise the delivered Goods and enjoy the benefit of the Services, to allow the Goods to perform those functions which they are designed for and to repair the delivered Goods (or to have those Goods repaired) and manufacture (or have manufactured) spare parts and replacements. The Contract price includes the full licence fee.

14.4 The Seller declares that the manufacture, delivery, use and/or repair of the Goods to be supplied and of each of the parts thereof and the application of the associated functions and the performance of the Services do not infringe any industrial and intellectual property rights held by third parties and the Seller shall indemnify the Buyer against any loss without limit arising out of claims, liabilities, and expenses (including loss of profits) resulting from any claim or action made by third parties against the Buyer alleging infringement of this condition 14.4.

14.5 Where the Buyer is notified by a third party of an alleged infringement it shall inform the Seller forthwith of such notification. The Seller shall promptly take such steps as may be necessary to secure to the Buyer the rights granted in conditions 14.2 and 14.3 above. If the Seller fails to take such steps within a reasonable period of time (and not more than one month after notification) the Buyer shall have the right to take such action itself whereupon the Seller shall indemnify the Buyer without limit against any costs or liability incurred by the Buyer in so doing. Such action shall include litigation arrangements or compromises with any rightful claimants and making changes in the delivered Goods without impairing the good quality and usability of the Goods as will cause them to become non-infringing.

14.6 The Buyer shall be entitled to apply for and hold such patent or other registered protection for any Buyer's Material as the Buyer thinks fit.

15. TERMINATION AND SUSPENSION

15.1 The Buyer shall have the right at any time and for any reason to suspend or terminate the Contract in whole or in part if any part of its works are closed down permanently or temporarily or if the Buyer ceases to operate any of its works in whole or in part, by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Buyer shall pay to the Seller compensation for any costs reasonably incurred or commitments made for work-in-progress or Services already performed at the time of termination or suspension

which cannot be mitigated. Such compensation shall be restricted to the value of work above and shall be the sole remedy of the Seller for such termination or suspension. Under no circumstances shall the Buyer be liable under the Contract for any loss of anticipated profits or any consequential or indirect loss.

15.2 The Buyer shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith:

- (a) in the circumstances set out in condition 6.3(h) or (i); or
- (b) if any distress, execution or other process is levied upon any of the assets of the Seller; or
- (c) if the Seller's financial position is such that either the Seller, its directors, shareholders or creditors take or are entitled to take steps to institute formal insolvency proceedings with respect to the Seller of a type provided for by the Insolvency Act 1986 (or any similar or analogous legislation, whether under English law or otherwise), including without limitation administration, liquidation, administrative receivership, receivership, voluntary arrangement, scheme of arrangement or bankruptcy, or if the Seller is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (or any similar or analogous legislation, whether under English law or otherwise); or
- (d) the Seller ceases or threatens to cease to carry on its business.

15.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Buyer which accrued prior to termination. Conditions 3.5, 11 (*Insurance*), 9 (*Indemnity and Limitation of Liability*), 12 (*Confidentiality*), 13 (*The Buyer's Property*) and 14 (*Intellectual Property*) shall continue to be enforceable notwithstanding termination.

16. ASSIGNMENT

16.1 The Seller shall not be entitled to assign the Contract or any part of it without the prior written consent of the Buyer.

16.2 The Buyer may assign or transfer the Contract or any part of it and/or any rights and obligations arising under it (including the benefit of any guarantee or warranty) to any person, firm or company and the Seller shall if required by the Buyer, enter into a novation agreement with the Buyer and the transferee or such other documentation as is necessary to give effect to any such assignment or transfer.

17. SUB-CONTRACTING

17.1 The appointment of sub-contractors or the performance of the Seller's obligations by or through any person other than the Seller shall be subject to the prior approval of the Buyer unless such other person is identified on the Purchase Order as acting in such capacity. However, the Buyer's approval shall not discharge the Seller in any respect from its duty properly and punctually to meet its obligations under the Contract and the Seller shall remain liable to the Buyer for any performance or non-performance of such obligations, whether by the Seller or any other Seller Party.

17.2 The Seller shall promptly and fully inform each other Seller Party as to the provisions contained in the Contract (including these conditions) which apply to them and shall ensure that each sub-contract with its sub-contractors and other arrangements with other Seller Parties ensure that such sub-contractors and Seller Parties are bound to such provisions of the Contract, as relevant as if those provisions were incorporated in that sub-contract.

17.3 If at any time during the Contract the Buyer is of the opinion that any Seller Party may or has breached any Law or may or has caused the Buyer to breach any Law, the Buyer shall be at liberty to object to any Seller Party being involved in the performance of the Contract either on the Site or in any other place. The Seller shall remove, or procure the removal of, that Seller Party from the provision of the Contract and/or any site of the Buyer as requested by the Buyer and he shall not be again involved in the provision of the Contract without the written permission of the Buyer. Any removal or withdrawal of any Seller Party under this condition 17.3 shall not constitute a valid reason for the Seller's failure to supply the Goods and/or provide the Services in accordance with the Contract.

18. NOTICES

18.1 All notices shall be in writing to the address or fax number given in the Contract (or such other address, fax number as the Buyer may notify to the Seller and vice versa) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. With the exception of notices under conditions 6.3(h), 14.5 and 15, all notices may be served by email to the email address given in the Contract (or such other email address as the Buyer may notify to the Seller and vice versa). All notices shall refer to the Purchase Order number.

18.2 A notice is deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) in the case of fax, at the time of transmission provided a successful transmission report is received;
- (c) in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting provided the envelope containing the notice was properly addressed and posted;
- (d) in the case of email, when sent, provided a delivery receipt is obtained; and
- (e) if deemed receipt under this condition 18 is not within business hours (meaning 9.00 am to 5.00 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery.

19. GENERAL

19.1 Each right or remedy of the Buyer under the Contract is without prejudice to any other right or remedy of the Buyer whether under the Contract or not and is in addition to any conditions implied in favour of the Buyer by Law.

19.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

19.3 Failure or delay by the Buyer in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

19.4 Any waiver by the Buyer of any breach of, or any default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

19.5 The parties to the Contract do not intend that any term of the Contract other than condition 9.1 shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

19.6 If a dispute arises under the Contract, the Representatives shall meet to attempt in good faith to resolve such dispute. If they cannot resolve such dispute within 10 days (or such other period as they agree), the dispute shall be referred to the senior management of the Seller and the Buyer, who shall meet to attempt in good faith to attempt to resolve such dispute within a further 10 days.

19.7 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law. The parties submit to the exclusive jurisdiction of the English courts, provided that the submission by the Buyer to the jurisdiction of the English courts shall not (and shall not be construed so as to) limit the right of the Buyer to bring legal proceedings in any other court of competent jurisdiction including without limitation the courts having jurisdiction by reason of the Seller's domicile. Legal proceedings by the Buyer in any one or more jurisdictions shall not preclude legal proceedings by it in any other jurisdiction whether by way of substantive action, ancillary relief, enforcement or otherwise. Prior to commencing legal proceedings, the Buyer and the Seller shall seek to resolve any dispute in accordance with condition 19.6 above.

19.8 The Seller shall not without the previous written consent of the Buyer advertise or, except for the performance of the Contract, make known to third parties the fact that the Seller supplies Goods or Services to the Buyer. The Seller shall not erect any advertisement or notice board (except for notices required to be displayed by statute or by the Contract) on any part of the Buyer's premises without first applying for and obtaining the Buyer's consent.

19.9 Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

19.10 The Contract constitutes the entire agreement between the Seller and the Buyer relating to the sale and purchase of the Goods and/or Services.

19.11 No amendment or variation of the Contract shall be effective unless it is expressly agreed by the Buyer in writing.

19.12 The Buyer reserves the right to refuse access to any Seller Party to the Buyer's premises. Access will only be granted to the extent necessary for the proper performance of the Seller's obligations.

19.13 Force Majeure – neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and by which its nature could not have been foreseen by such party or, if it could have been foreseen was unavoidable provided that the Supplier shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract.