



GENERAL TERMS AND CONDITIONS OF SALE AND CONTRACT (“TERMS”) – GOODS AND SERVICES

1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms the following words and expressions shall have the following definitions:

Business Day means a day other than a Saturday, Sunday or public holiday in England when the banks in London are open for business;

Commencement Date has the meaning set out in clause 2.1 (Machine Supplies) or in clause 2.2 (Supplemental Supplies);

Contract means the terms and conditions on which Goods and/or Services are supplied to the Customer, being the Terms and, in the case of Machine Supplies, the Confirmation Order or, in the case of Supplemental Supplies, the Quotation;

Customer means the person or legal entity who purchases Machine Supplies, or Supplemental Supplies from the Supplier, as detailed in the Order Confirmation for Machine Supplies or the Quotation for Supplemental Supplies;

Delivery Date means the date specified for the delivery of Goods or Services in an Order Confirmation or Quotation or, if no date is specified, the date that delivery takes place or is deemed to take place in accordance with clause 7;

Goods means the Supplemental Goods or Machines (or any part of them);

Good Industry Practice means standards, practices, methods and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstance;

Installation Services means the services to be provided by the Supplier in relation to the installation and commissioning of a Machine as detailed in an Order Confirmation;

Intellectual Property Rights means patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer 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;

Machine means the structural steel and plate fabrication equipment to be supplied by the Supplier as detailed in an Order Confirmation;

Order Confirmation means a detailed written description from the Supplier of Machine Supplies and any applicable costs, special conditions and timescales as agreed between the Supplier and Customer;

Price means the charges made by the Supplier for Goods and/or Services as detailed in an Order Confirmation for Machine Supplies or a Quotation for Supplemental Supplies (or as otherwise indicated by the Supplier) in accordance with clause 3;

Purchase Order means the Customer's written acceptance of a Quotation;

Services means the Installation Services or Supplemental Services (or any part of them);

Supplier means Ficep UK Limited;

Quotation means:

- (a) in the case of Machine Supplies, a non-legally binding written description of the Machine and any Services and Supplemental Goods to be supplied with or in connection with the Machine, any special conditions in relation to such supply, and an estimate of the likely costs and timescales for such supply; and
- (b) in the case of Supplemental Supplies, a written quotation of the cost and details of those Supplemental Goods and/or Supplemental Services;

Supplemental Goods means spare parts, tools, consumables and other goods (excluding Machines) supplied by the Supplier as detailed in a Quotation;

Supplemental Services means any services to be provided by the Supplier which are not Installation Services; and

Supplemental Supplies means the supply of Supplemental Goods and/or Supplemental Services.

2. FORMATION OF CONTRACT AND BASIS OF SUPPLY

- 2.1. **Machine Supplies:** A Quotation for Machine Supplies does not form a legally binding offer to enter into a contract but is a scope of supply which is subject to further changes. The Order Confirmation in relation to such Machine Supplies constitutes an offer by the Supplier to the Customer to purchase the Machine Supplies in accordance with these Terms and that Order Confirmation. The Supplier's offer is accepted by the Customer providing a signed copy of the Order Confirmation to the Supplier or otherwise confirming its acceptance in writing and the "**Commencement Date**" is the date the Order Confirmation is signed or the date such other written confirmation is given to the Supplier.
- 2.2. **Supplemental Supplies:** A Quotation for Supplemental Supplies is an offer by the Supplier to the Customer to purchase such Supplemental Supplies. The Supplier's offer is accepted by the Customer providing a Purchase Order for such supply or otherwise confirming its acceptance in writing. The Supplier may accept orders for Supplemental Supplies from the Customer without providing Quotations in which case its confirmation (verbally or in writing) of such order is an offer to the Customer to purchase such Supplemental Supplies. In each case the "**Commencement Date**" is the date of such Purchase Order or the date such other written confirmation is given to the Supplier.
- 2.3. The Supplier shall provide Goods and/or Services to the Customer from the Commencement Date and for any duration specified in the Order Confirmation for Machine Supplies, or as specified in the Quotation for Supplemental Supplies.
- 2.4. These Terms apply to the exclusion of all other terms including, without limitation, any terms appearing on a Purchase Order or which the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealings.
- 2.5. Time in respect of delivering Goods and/or providing Services is not of the essence.

3. PRICE

- 3.1 Quotations are valid for 14 days for Supplemental Supplies. Quotations for Machine Supplies are valid for 60 days but are not binding and are subject to change until finalised in an Order Confirmation.

- 3.2 Where an Order Confirmation or Quotation for Supplemental Supplies has been given and a contract has been formed as set out in clause 2.1 or clause 2.2, the Supplier reserves the right to increase the Price to cover any of the following circumstances:
- 3.2.1 the cost of any additional special testing, or investigation, required by the Customer, or by any relevant regulatory body or manufacturer;
 - 3.2.2 the cost of any additional Goods and/or Services requested or agreed to be purchased by the Customer which were not detailed in the Order Confirmation or Quotation;
 - 3.2.3 any increase in labour costs and/or material prices outside the control of the Supplier;
 - 3.2.4 any additional costs where the Price or any element of it was indicated in the Order Confirmation or Quotation as being an estimate;
 - 3.2.5 any additional costs incurred by the Supplier where the supply of Goods and/or Services is suspended in accordance with the Customer's instructions;
 - 3.2.6 where the Customer requests a change in the Delivery Date, Goods or Services;
 - 3.2.7 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate instructions or information; and/or
 - 3.2.8 the costs of any special packing of the Goods required above the Supplier's standard packing, carriage, insurance, airport, dock or handling fees and other charges stated to be separate to the Price.
- 3.2 If orders for Supplemental Supplies are made without a Quotation being supplied (as set out in clause 2.2), the Price shall be verbally confirmed by the Supplier to the Customer.
- 3.3 The Goods will be delivered in the Supplier's standard packaging unless otherwise expressly agreed in writing by the Supplier whether in the Order Confirmation (for Machine Supplies), Quotation (for Supplemental Supplies) or otherwise.
- 3.4 Unless otherwise expressly agreed in writing, the Price is exclusive of value-added tax and any other taxes, duties and impositions which, if applicable, shall be paid by the Customer in addition to the Price.
- 3.5 The Price is exclusive of the costs of packaging, insurance, carriage and installation of the Goods which shall be invoiced to the Customer in accordance with clause 5.

4. CUSTOMER OBLIGATIONS

- 4.1. The Customer shall:
- 4.1.1. co-operate with the Supplier in all matters relating to the Goods and Services;
 - 4.1.2. provide the Supplier and its employees, agents, consultants and subcontractors with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services and deliver the Goods;
 - 4.1.3. provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services and Goods, and ensure that such information is complete and accurate in all material respects;
 - 4.1.4. prepare the Customer's premises for the supply of the Services and delivery of the Goods;

- 4.1.5. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - 4.1.6. comply with all applicable laws, including health and safety laws;
 - 4.1.7. keep all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
 - 4.1.8. comply with any additional obligations as set out in the Order Confirmation or Quotation.
- 4.2. If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**") then:
- 4.2.1. without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - 4.2.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - 4.2.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default

5. **PAYMENT**

- 5.1 The Supplier will invoice the Customer as set out in the Quotation or Order Confirmation (which may include a deposit, advance payments or staged payments) or:
 - 5.1.1 upon delivery of Supplemental Goods (and the Supplier reserves the right to submit interim invoices in relation to partial deliveries); or
 - 5.1.2 upon the completion of or at set stages throughout the delivery of Supplemental Services.
- 5.2 All Goods sold or Services provided must be paid for in cleared funds and in full by the end of the calendar month following the date of the invoice, unless agreed otherwise in writing by a director of the Supplier. Each invoice shall quote the relevant order number.
- 5.3 All amounts due under the Contract from the Customer to the Supplier shall be paid in immediately available cleared funds, and in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Supplier reserves the right to set off any sums due from the Customer to the Supplier against any sums due from the Supplier to the Customer.
- 5.4 All payments shall be made in United Kingdom sterling, unless the Company has stipulated for payment in another currency, and in immediately available cleared funds.
- 5.5 Time of payment is of the essence and if the Customer fails to make payment to the Supplier under the Contract by the due date set out in clause 5.2, then without limiting the Supplier's remedies under clause 14 (Termination), the Supplier may suspend the delivery of any further Services or Goods to the Customer and take steps to recover such unpaid sum and the Customer shall pay interest on the overdue sum from the date of the due date until payment of the

overdue sum in accordance with clause 5.6.

5.6 The Supplier reserve the right to charge interest on any overdue amount which shall accrue each day following the day payment was due at 4% a year above the Bank of England's base rate from time to time, but at 4% for any period when the base rate is below 0%.

5.7 Where the Price quoted includes payments to third parties and the third party has not by the date the Supplier invoices the Customer provided an invoice to the Supplier, the Supplier reserves the right to raise an invoice to include an estimate of such third party payments. This third party payment is subject to adjustment. Should an adjustment be required, the Supplier may amend and re-issue the invoice.

5.8 The Supplier reserves the right to apply monies received from the Customer to any outstanding invoice(s)..

6. **CANCELLATION AND RETURNS**

6.1. In the event of cancellation of an order by the Customer before the delivery or provision of the Goods and/or Services within that order, the Customer shall in accordance with clause 5 pay to the Supplier all costs reasonably incurred by the Supplier in relation to such order.

6.2. The Supplier may in its discretion accept the return of Supplemental Goods provided that the returned Supplemental Goods are not custom made, are unused and in a re-saleable condition and that the Customer pays for the carriage of such Supplemental Goods back to the Supplier. If the Supplier accepts a return, it will provide a refund to the Customer of the Price of such Supplemental Goods less a 20% re-stocking fee.

7. **TRANSPORT & DELIVERY**

7.1 Unless otherwise agreed in writing, delivery of Goods and/or Services to the Customer shall take place at the address stated on the Order Confirmation (Machine Supplies) or Quotation (Supplemental Supplies) (the "**Delivery Location**").

7.2 The time and date estimated for the Delivery Date or completion of Services is not of the essence although the Supplier will make reasonable efforts to make delivery or complete the Services within the time quoted. The Supplier shall not be held responsible or liable for any losses or damage caused to the Customer by late delivery or completion.

7.3 Delivery of Goods (whether in full or by instalments) shall be completed on the completion of the unloading of those Goods at the Delivery Location.

7.4 If the Customer fails to take delivery of the Goods when the Supplier attempts delivery to the Delivery Location in accordance with clause 7.1, or fails to give adequate delivery instructions within 14 days after being requested to do so by the Supplier, the Goods shall be deemed to have been delivered to the Customer in the case of a failed delivery on the date the Supplier attempted delivery in accordance with clause 7.1, and in the case of a failure to provide instructions, on the Delivery Date, and the Supplier may in each case, without prejudice to its other rights:

7.4.1 dispose of or re-sell all or part of the Goods and charge the Customer for any shortfall below the Price of the Goods; and

7.4.2 store the Goods at the Customer's expense until delivery takes place or the Goods are disposed of or re-sold.

8. **QUALITY OF GOODS**

- 8.1. The Supplier warrants that in relation to Machines, for a 12 month period commencing on the Delivery Date and, in relation to Supplemental Goods which are spare parts ("**Spare Parts**"), for a three month period (**Warranty Period**), those Goods shall:
 - 8.1.1. conform in all material respects with their description in the Order Confirmation (Machines) or Quotation (Spare Parts);
 - 8.1.2. be in compliance with all applicable laws;
 - 8.1.3. be free from material defects in design, material and workmanship and be in accordance with Good Industry Practice; and
 - 8.1.4. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 8.2. Subject to clause 8.3, the Supplier shall, at its option, repair or replace defective Machines or Spare Parts or refund the price of the defective Machines or Spare Parts in full if:
 - 8.2.1. the Customer gives notice in writing to the Supplier during the relevant Warranty Period within a reasonable time of discovery that some or all of the warranted Goods do not comply with the warranty set out in clause 8.1;
 - 8.2.2. the Supplier is given a reasonable opportunity of examining such warranted Goods; and
 - 8.2.3. the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's costs.
- 8.3. The Supplier shall not be liable for the warranted Goods' failure to comply with the warranties in clauses 8.1 if:
 - 8.3.1. the Customer makes any further use of such Goods after notice has been served in accordance with clause 8.2.1;
 - 8.3.2. the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice, or the locking device or safety system for the Goods has been interfered with or not installed in line with Good Industry Practice;
 - 8.3.3. the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
 - 8.3.4. the Customer alters or repairs such Goods without the written consent of the Supplier;
 - 8.3.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, misuse, neglect, or abnormal working conditions;
 - 8.3.6. the Customer does not comply with clause 8.2;
 - 8.3.7. the warranted Goods are incorporated by the Customer or any third party into another component, machine or piece of equipment; or

- 8.3.8. in the case of the warranty in clause 8.1.1 only, the Goods differ from the Order Confirmation as a result of changes made in accordance with the Customer's instructions or to ensure they comply with applicable statutory or regulatory standards.
- 8.4. Except as provided in this clause 8, the Supplier shall have no liability to the Customer in respect of any warranted Goods' failure to comply with the warranty in clause 8.1.
- 8.5. The provisions of this clause 8 shall apply to any repaired or replacement Goods supplied by the Supplier but the Warranty Period in question shall expire upon the date the Warranty Period for the original Goods would have expired.
- 8.6. Each warranty claim under clause 8.1 will be subject to the Supplier undertaking an in-house investigation. In the event of a rejection of any warranty claim, a copy of the written report of the results of the investigation will be made available to the Customer on request. If the Customer wishes to contest/appeal against the warranty decision it should do so in writing to the Supplier's service manager. The service manager will review the warranty findings and give a decision upon whether he/she agrees or disagrees with the rejection of the warranty claim. Should the Customer wish to appeal the outcome of the in-house investigation, it may do so in accordance with clause 16.1 (Dispute Resolution).
- 8.7. Whilst the Supplier shall seek to obtain for the Customer from third party suppliers of any part or parts of the Goods the benefit of any warranty or guarantee for that part given by the third party supplier to the Supplier, the Supplier shall not be liable for any loss or damage arising directly or indirectly from the failure of such part.
- 8.8. The warranty in clause 8.1 only applies to Goods which are supplied new by the Supplier and not to Goods which are reconditioned, overhauled, repaired, hired, serviced, tested or inspected by the Supplier.

9. **LIMITATION OF LIABILITY**

- 9.1. In no circumstances will the Supplier be liable for and the Supplier accepts no responsibility for loss or damage or destruction of the Goods while such Goods are in transit from the Supplier's premises except where carriage is in one of the Supplier's vehicles or subject to insurance being provided as set out in the Order Confirmation.
- 9.2. References to liability in this Clause 9 include every kind of liability arising under or in connection with the Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.3. Without prejudice to Clause 9.6, the Supplier's total liability to the Customer shall not exceed the Price received from the Customer.
- 9.4. Subject to clause 9.6, the Supplier's liability to the Customer excludes:
- 9.4.1. any indirect losses or damages;
 - 9.4.2. loss of profit;
 - 9.4.3. loss of sales or business;
 - 9.4.4. loss of agreements or contracts;
 - 9.4.5. loss of anticipated savings; or
 - 9.4.6. indirect, special or consequential loss.
- 9.5. Advice and information, in whatever form it may be given, is provided in good faith by the Supplier only, and without liability, and the Customer shall have no claim against the Supplier for any loss, damage, costs or expenses arising out of the Customer or any other party relying upon such advice or information.
- 9.6. Nothing in the Contract shall exclude or limit the liability of the either Party for:
- 9.6.1. death or personal injury caused by negligence;

9.6.2. fraud or fraudulent misrepresentation; or

9.6.3. any matter for which liability cannot by law be excluded or limited.

9.7. This clause shall survive termination or expiry of the Contract.

10. **FORCE MAJEURE**

10.1 Force Majeure Event means any circumstance beyond the Supplier's reasonable control including but not limited to:

10.1.1 act of God, explosion, flood, tempest, earthquake or fire;

10.1.2 epidemic or pandemic;

10.1.3 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

10.1.4 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

10.1.5 import or export regulations or embargoes;

10.1.6 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Supplier or of a relevant third party);

10.1.7 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

10.1.8 power failure or breakdown in machinery; or

10.1.9 interruption of failure of utility service.

10.2 Provided that the Supplier has complied with clause 10.3, if the Supplier is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event, the Supplier shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

10.3 The Supplier shall as soon as reasonably practicable after the start of the Force Majeure Event:

10.3.1 notify the Customer in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and

10.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

10.4 If the Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 12 weeks in the case of Machine Supplies or three weeks in the case of Supplemental Supplies, the Customer may terminate the Contract by giving one month's written notice to the Supplier.

11. **TRAINING**

11.1. Where agreed and as detailed in an Order Confirmation, the Supplier shall provide training to the Customer in relation to Machines. The Customer acknowledges that it must exercise its own skill and judgement when using the information provided in relation to the Goods and acknowledges that the Supplier has no liability for any damage or loss howsoever caused (including damage and loss caused by (but not limited to) any errors, loss of data, inaccuracies or omissions in any information, advice, instructions, content or scripts provided to the Customer) by its use or reliance on the training.

11.2. The Customer is responsible for ensuring that it and its staff follow and comply with training and that it has suitably trained and competent operatives. The Customer is responsible for ongoing training of its staff beyond any agreed to

be provided by the Supplier.

12. PROPERTY AND RISK, RIGHT OF RECOVERY

- 12.1 Risk in any Goods sold, hired or supplied by the Supplier to the Customer shall pass to the Customer on delivery.
- 12.2 Risk and title in any Goods provided by the Customer to the Supplier to undertake reconditioning, overhaul, repair, service, testing or inspection shall at all times remain vested in the Customer (subject to the lien set out in clause 13).
- 12.3 If the Supplier removes any part of the Goods delivered to it by the Customer in accordance with clause 12.2 in order to replace it, the Supplier shall be entitled, unless otherwise instructed by the Customer in writing, to dispose of such removed part and to retain for its own benefit the proceeds of any sale or other disposal of the same.
- 12.4 Notwithstanding delivery of the Goods to the Customer, any Goods supplied by the Supplier to the Customer shall remain the property of the Supplier until receipt by the Supplier of payment in full of the Price and all other sums on any account whatsoever owed by the Customer to the Supplier. Once such sums have been received by the Supplier, the title in the delivered Goods shall pass to the Customer.
- 12.5 If so requested by the Supplier, the Customer shall place on the Goods (and maintain) a plate indicating that the Goods are the Supplier's property. The plate will be in such form and of such size and prominence as the Supplier requires.
- 12.6 Where the title of the Goods remains with the Supplier after delivery, the Customer may use those Goods in the ordinary course of its business provided that during such period the Customer shall not sell or otherwise dispose of the Goods and, if required to do so, the Customer will keep the Goods separate from its other stock in such a way as to be readily identifiable by the Supplier.
- 12.7 If before title passes to the Customer the Supplier has the right to terminate the Contract as set out in clause 14 the Supplier shall be entitled to require the Customer to deliver up all Goods in its possession that have not been irrevocably incorporated into another product and to enter the Customer's or any third party's premises without notice at any time to repossess such Goods. This clause shall survive termination or expiry of the Contract.

13. LIEN AND RIGHT OF RE-SALE

- 13.1 The Supplier will have, in addition to any other right or remedy available to it, a lien and power of sale over any Goods delivered to it by the Customer for reconditioning, overhaul, repair, service, testing or inspection for all monies (whether presently payable or not) payable by, and all debts and liabilities (whether or not the period for payment or discharge of the same shall have actually arrived) of the Customer to the Supplier under any contract and such lien shall cover such Goods whether or not the Supplier shall at the time of exercise of the lien have begun or completed reconditioning, overhaul, repair, service, testing or inspection of such Goods.
- 13.2 Without prejudice to any other rights of the Supplier whether under the Contract or otherwise, if any sum due from the Customer has not been paid within three weeks after becoming due, the Supplier may, upon providing seven days' notice of its intention to do so, if such sums are not paid by the end of such notice period, dispose of (whether by auction or private treaty or in any other manner) any or all of the Goods in the Supplier's possession on which the Supplier has a lien. The net proceeds of such sale of Goods shall be applied towards payment or satisfaction of the debts or liabilities owed by the Customer to the Supplier. Any surplus monies shall be paid to the Customer.

13.3 The Supplier shall be entitled to refuse to deliver up any Goods of the Customer it holds at any time unless the Price and all charges accrued due under the Contract and all other sums (if any) then owed by the Customer to the Supplier under any contract or on any account whatsoever have been paid.

14. **TERMINATION**

14.1. Without affecting any other right available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

14.1.1 the Customer commits a material breach of any of the Contract and if such breach is remediable fails to remedy that breach within seven days after being notified in writing to do so;

14.1.2 the Customer fails to pay any amount due under the Contract on the due date for payment;

14.1.3 the Customer repeatedly or persistently breaches the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the Contract; or

14.1.4 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors, being wound up (whether voluntarily or by order of the court), having a receiver appointed to any of its assets or ceasing to carry on business, having a monitor appointed with regards to a restructuring moratorium under Part A1 of the Insolvency Act 1986, having a restructuring plan implemented under section 901(c)(1) of the Companies Act 2006, provided that such right to terminate follows the exceptions permitting termination of the Contract as stipulated in section 233B(5) and (6) schedule 4ZZA of the Insolvency Act 1986;

14.2 Without affecting any other right or remedy available to it, if any of the provisions of clause 14.1 apply then the Supplier may, at its discretion and without prejudice to its other rights:

14.2.1 suspend any deliveries of Goods and/or Services to be made under the Contract and any other contracts with the Customer;

14.2.2 repossess and resell any Goods in accordance with the Contract; and/or

14.2.3 declare (whereupon there shall forthwith become) that the Price of the Goods and or Services are immediately due and payable under any contract between the Parties.

15. **INTELLECTUAL PROPERTY RIGHTS**

15.1. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

15.2. The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

15.3. The Customer shall indemnify the Supplier against all liabilities, losses, damages, penalties, costs and expenses (including but not limited to any direct, indirect consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any work done in accordance with

the Customer's specification (on which the Order Confirmation was provided) which involves any infringement of any party's Intellectual Property Rights.

16. **MISCELLANEOUS**

16.1 **Dispute Resolution**

16.1.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it ("**Dispute**"), then, except as expressly provided in the Contract, the parties shall follow the procedure set out in this clause:

- a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, a senior officer of each party shall attempt in good faith to resolve it; and
- b) if the senior officers are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 45 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing ("**ADR Notice**") to the other party to the Dispute, referring the dispute to mediation. Unless otherwise agreed between the parties, the mediation will start not later than 30 days after the date of the ADR notice.

16.1.2 If the Dispute is not resolved within 90 days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the expiry of that 90 day period, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 17.

16.2 **Severance:** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision shall not affect the validity and enforceability of the rest of the Contract.

16.3 **Third party rights:** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the Terms. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

16.4 **Variation:** Except as set out in the Contract, no variation of these Terms or any Order Confirmation or Quotation shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16.5 **Waiver:** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16.6 **Authority:** The Customer warrants to the Supplier that it has the power and authority to enter into this Contract.

16.7 **Entire Agreement:**

16.7.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.7.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

16.7.3 Nothing in this clause shall limit or exclude any liability for fraud.

16.8 **Notices**

16.8.1 Any notice or other communication required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier or by email, to each party required to receive the notice or communication as set out in the Order Confirmation or as otherwise specified by the relevant party by notice in writing to each other party.

16.8.2 Any notice shall be deemed to have been duly received:

- a) if delivered personally, when left at the address and for the contact referred to in this clause;
- b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting;
- c) if sent by email, upon transmission of the email; or
- d) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

16.9 **Supplier Authority:** No employee or agent of the Supplier has any authority to give or make any representation or warranty relating to Goods or Services provided or to be provided by the Supplier unless such representation or warranty is in writing and signed on behalf of the Supplier by a Director or a Manager of the Supplier.

17 **GOVERNING LAW AND JURISDICTION**

17.1 The Contract and any dispute or claim (including non-contractual disputes or claims) out of or in connection with its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

17.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.