

# GEW (EC) Limited Terms And Conditions

## 1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

<b>Application Specification:</b>	any specification for the Goods and the application for which the Goods will be used, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.
<b>Special Goods:</b>	Goods developed by the Supplier specifically for the Customer, which may include standard Goods proprietary to the Supplier modified or to be modified by the Supplier and which are the first of their kind or for a new application, may include design and development work and are identified on the Supplier's quotation as Special Goods, as listed in the Order.
<b>Business Day:</b>	a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.
<b>Commencement Date:</b>	has the meaning set out in clause 2.2.
<b>Conditions:</b>	these terms and conditions as amended from time to time in accordance with clause 19.8.
<b>Contract:</b>	the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
<b>Customer:</b>	the person or firm who purchases the Goods and/or Services from the Supplier.
<b>Deliverables:</b>	the deliverables set out in the Order, if any.
<b>Delivery Location:</b>	has the meaning set out in clause 4.2.
<b>Force Majeure Event:</b>	has the meaning given to it in clause 19.1.1.
<b>Goods:</b>	the goods (or any part of them) set out in the Order, including parts, products and systems.
<b>Intellectual Property Rights:</b>	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
<b>Order:</b>	the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, as the case may be.
<b>Services:</b>	the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.
<b>Service Specification:</b>	the description or specification for the Services provided in writing by the Supplier to the Customer.
<b>Site(s):</b>	The location(s) at which the Goods are to be installed as specified in the Customer's Order or the Supplier's quotation, as the case may be.
<b>Supplier:</b>	GEW (EC) LIMITED registered in England and Wales with company number 02590164.
<b>Supplier Materials:</b>	has the meaning set out in clause 12.1.11.
<b>Validation Date:</b>	the date the Customer's commissioning sheet is validated by the Supplier, following submission by the Customer of the Customer's commissioning sheet containing the Customer's commissioning data and all other information required by the Supplier.

1.2 **Construction.** In these Conditions, the following rules apply :

- 1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 a reference to a party includes its successors or permitted assigns;
- 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

## 2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's data sheets, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 60 days from its date of issue.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

## 3. GOODS

- 3.1 The Goods are described in the Supplier's data sheet as modified by any applicable specific quotation.
- 3.2 To the extent that the Goods are to be manufactured in accordance with an Application Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Application Specification. This clause clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

## 4. DELIVERY OF GOODS

- 4.1 The Supplier shall ensure that:
  - 4.1.1 each delivery of the Goods is accompanied by a delivery note, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - 4.1.2 if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

- 4.2 Delivery of the Goods shall be as set out in the Supplier's quotation or as otherwise agreed in writing. The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location or otherwise in accordance with the delivery terms agreed in writing.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6 If the Customer fails to accept or take delivery of the Goods within 2 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
  - 4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
  - 4.6.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 15 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5 per cent more or less than the quantity of Goods ordered.
- 4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5. QUALITY OF GOODS

- 5.1 Subject to clause 5.2 and 5.3 and provided that only lamps supplied by the Supplier or one of the Supplier's approved distributors are used with the Goods, the Supplier warrants that on delivery, and for a period ending on the date 12 months (or such other warranty period as is agreed in writing) from the Validation Date, Goods that are systems shall:
  - 5.1.1 conform in all material respects with their description and any applicable data sheet; and
  - 5.1.2 be free from material defects in design, material and workmanship, provided the commissioning sheet is submitted by the Customer to the Supplier within 3 months of delivery.
- 5.2 The warranty period for replacement parts is 6 months from the date of delivery, unless otherwise agreed in writing.
- 5.3 The warranty period for lamps is 1,000 hours, provided genuine Supplier UV lamps are used.
- 5.4 Subject to clause 5.5, if:
  - 5.4.1 the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
  - 5.4.2 the Supplier is given a reasonable opportunity of examining such Goods; and
  - 5.4.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost and risk, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.5 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
  - 5.5.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
  - 5.5.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - 5.5.3 the defect arises as a result of the Supplier following any drawing, design or Application Specification supplied by the Customer;
  - 5.5.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
  - 5.5.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
  - 5.5.6 the Goods differ from the Application Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.6 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.7 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.4.

## 6. SPECIAL GOODS

- 6.1 General:
  - 6.1.1 The Supplier shall develop the Special Goods in accordance with the requirements of the Application Specification.
  - 6.1.2 The Supplier agrees:
    - (a) To deliver the Supplier Goods to the Customer;
    - (b) To carry out, in conjunction with the Customer, the Acceptance Tests; and
    - (c) To provide the Goods installed, tested and having passed or deemed to have passed the Acceptance Tests under clause 7.4 by the agreed date.
  - 6.1.3 If requested, to do so by the Customer, the Supplier shall:
    - (a) Provide the training specified in the Supplier's quotation at the rates provided for in that document;
    - (b) Make available to the Customer suitably qualified personnel to carry out the Services.
  - 6.1.4 In performing the services, the Supplier shall comply with the customer's reasonable instructions to ensure minimal disruption to the Customer's business.
- 6.2 Pre installation testing:
  - 6.2.1 The Supplier shall carry out the pre-installation tests on the Special Goods before delivery to the Delivery Location in accordance with the following provisions:
    - (a) Before or with the Customer's Order, the Customer shall deliver to the Supplier proposed user acceptance criteria and test data for the pre-installation tests for each module of the Special Goods. These criteria and data shall be such as are reasonably required to show that the Special Goods comply with the relevant parts of the Application Specification. The Supplier shall provide the Customer, at the Customer's request, with assistance to prepare such user acceptance criteria and test data at the Customer's request at the Supplier's standard rates then in force. The parties shall use best endeavours to agree the pre-installation tests within 10 days from the date of delivery to the Supplier of the proposed criteria and data, and such pre-installation tests shall be annexed to the Order;
    - (b) Within a reasonable time before the scheduled delivery date, the Supplier shall carry out the agreed pre-installation tests for the Goods.

- (c) If the Goods fail to pass the pre-installation tests, the Supplier shall remedy the defects and deficiencies, and the relevant test(s) shall be repeated within a reasonable time.

## **7. INSTALLATION AND ACCEPTANCE**

7.1 The provisions of this clause 7 shall apply to Goods that are systems or products which we install but not to replacement parts or lamps.

7.2 Installation and delays:

7.2.1 The Supplier shall supply to the Customer, within a reasonable time before delivery, such information and assistance as may be necessary to enable the Customer to prepare the Site(s) for the installation of the relevant Goods.

7.2.2 The Customer shall, at its own expense, prepare the Site(s) in accordance with the information provided by the Supplier in advance of delivery.

7.2.3 The Customer, or if engaged to do so as part of the Services, the Supplier shall complete installation of the Goods at the Site(s).

7.2.4 If any delivery is delayed at the request of the Customer, or because of his acts or omissions, if the Supplier can demonstrate that the delay has resulted in an increase in cost to the Supplier of carrying out its obligations under the Contract, the Supplier, may at its sole discretion, notify the Customer that it wishes to increase the price by an amount not exceeding any such demonstrable cost. The Supplier may invoice the Customer for any additional monies that become payable in this way, within 30 days of demonstrating the increase in costs.

7.3 Acceptance tests:

7.3.1 Before or with the Customer's Order, the Customer shall deliver proposed user acceptance criteria to the Supplier and test data for the Acceptance Tests for the Goods. These criteria and data shall be such as are reasonably required to show that the Goods comply with the Application Specification. The Supplier shall provide the Customer with reasonable assistance to prepare such user acceptance criteria and test data at the Customer's request and at the Supplier's standard rates then in force. The Supplier will agree the acceptance criteria on acceptance of the Customer's Order and the Contract shall not be deemed to be formed until the parties agree the acceptance criteria.

7.3.2 The Customer shall carry out the agreed Acceptance Tests for the Goods within 10 days of its mechanical installation date. The Acceptance Tests shall be started as soon as reasonably possible after installation and shall be run continuously during normal working hours. The Customer shall give the Supplier at least 1 weeks' notice of the start of the Acceptance Tests, and permit the Supplier to observe all or any part of the testing.

7.3.3 If the Goods fail to pass the Acceptance Tests, the Customer shall, within 2 Business Days from the completion of the Acceptance Tests or any part of these tests, provide a written notice to this effect, giving details of such failure(s). The Supplier shall remedy the defects and/or deficiencies and the relevant tests(s) shall be repeated within a reasonable time.

7.3.4 If the Goods fail in some material respect to pass any repeated Acceptance Tests within four weeks from the date of its second submission to the Acceptance Tests, then the Customer may, by written notice to the Supplier, choose at its sole discretion:

- (a) to fix (without prejudice to the Customer's other rights and remedies) a new date for carrying out further tests on the Goods on the same terms and conditions. If the Goods fails such further tests then the Customer may request a repeat test under this clause 7.3.4;
- (b) to permit commissioning of the Goods subject to such change of acceptance criteria, amendment of the Application Specification and/or reduction in the price as, after taking into account all the relevant circumstances, is reasonable; or
- (c) if the Supplier is unable to correct material defects within a period of three months from the commencement of Acceptance Tests under clause 7.3.2, to reject the Goods as not being in conformity with the Contract, in which event the Customer may terminate this agreement.

7.4 Acceptance:

7.4.1 Acceptance of the Goods shall be deemed to have occurred on whichever is the earliest of:

- (a) the signing by the Customer of an acceptance certificate for the final Goods to pass the Acceptance Tests;
- (b) the expiry of five days after the completion of all the Acceptance Tests, unless the Customer has given any written notice under clause 7.3.3;
- (c) the expiry of 10 days after the installation date of the final Goods if the Acceptance Tests for the Goods have not started, or have not been pursued with due diligence; or
- (d) the use of the Goods by the Customer or end user in the normal course of business.

## **8. CHANGE CONTROL AND EXTENSION OF TIME**

8.1 Change Control:

8.1.1 The Customer may, by giving written notice to the Supplier at any time during the term of this agreement, request a change to the Goods.

8.1.2 Within seven working days of receipt of such notice, the Supplier shall, at its standard rates then in force, prepare for the Customer a written quote for any increase or decrease in the price, the likely time required to implement the change, any effect that the requested change would have on the date of delivery, installation or commissioning and any other impact of the change on the Contract.

8.1.3 Within 14 working days of receipt of the written quote referred to in clause 8.1.2, the Customer shall inform the Supplier in writing of whether or not the Customer wishes the requested change to be made. If the change is required, the Supplier shall not make the requested change until the parties have agreed the necessary variations to its charges, the performance milestones and any other relevant terms of the Contract to take account of the change and this agreement has been varied in accordance with clause 19.8.

8.2 Extension of time:

8.2.1 The Supplier shall be given an extension of the timetable if one or more of the following events occurs:

- (a) a variation to the Goods is made at the Customer's request under the change control procedures set out in clause 8.1;
- (b) a force majeure event occurs as described in clause 19.1;
- (c) a delay is caused in whole or in part by an action or omission of the Customer or its employees, agents or third-party contractors.

8.2.2 If the Supplier is entitled to an extension of time under clause 8.2.1, it shall give written notice to the Customer not later than seven days after the beginning of the event. Such notice shall specify the event relied on and, in the case of a force majeure event under clause 19.1, shall estimate the probable extent of the delay.

8.2.3 The Customer and the Supplier shall use best endeavours to agree in writing, signed by both parties, what extension of time is reasonable in the circumstances.

## **9. IMPORT AND EXPORT LICENCES**

9.1 The Customer is responsible for obtaining, at its own cost, such import and export licences and other consents in relation to the Goods as are required from time to time and, if required by the Supplier, the Customer shall make those licences and consents available to the Supplier prior to the relevant shipment.

## **10. TITLE AND RISK**

10.1 The risk in the Goods shall pass to the Customer on completion of delivery.

10.2 Except as provided in this clause 10, no title to the Goods shall pass to the Customer or any third party until the Supplier has received payment in full (in cash or cleared funds) for:

- 10.2.1 the Goods; and
- 10.2.2 any other goods that the Supplier has supplied to the Customer.

- 10.3 Subject to clause 10.4, until the Supplier has received payment of the sums due under clause 10.2, the Customer shall:
- 10.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;
  - 10.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - 10.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 10.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
  - 10.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 17.1.2 to clause 17.1.12; and
  - 10.3.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 10.4 The Customer may use the Goods in the ordinary course of business and may sell the Goods in the ordinary course of business on commercially reasonable terms as principal as between the Customer and any third party and without any right to commit the Supplier to any contractual relationship or liability with any third party, but as between the Customer and the Supplier on any such sale the Customer shall act as fiduciary agent of the Supplier and provided that, in the event that the Supplier has not lost title to the Goods prior to sale by reason of their use, consumption or incorporation into other products (for the avoidance of doubt, the Customer acknowledges and agrees that the Goods maintain their identity when incorporated and can be separated by a simple procedure without causing damage and that the Supplier shall not lose title to the Goods when incorporated):
- 10.4.1 The Customer shall not have authority to transfer title to the Goods unless and until the Customer has received payment or payments for the sale in a sum no less than the total sums due under clause 10.2;
  - 10.4.2 the Customer shall hold all sums paid to the Customer by the third party pursuant to the sale (**Third Party Sale Payment**) on account for the benefit of the Supplier and agrees to pay the Third Party Sale Payment into a separate and dedicated account;
  - 10.4.3 the Customer shall account to the Supplier for the Third Party Sale Payment and the Supplier undertakes to account to the Customer any balance remaining from the Third Party Sale Payment after the Supplier has appropriated the total sums due under clause 10.2 or such sums less than the total sums due under clause 10.2 which the Supplier has appropriated.
- 10.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 17.1.2 to clause 17.1.12, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 11. SUPPLY OF SERVICES

- 11.1 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 11.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Customer's purchase order or the Supplier's quotation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 11.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 11.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## 12. CUSTOMER'S OBLIGATIONS

- 12.1 The Customer shall:
- 12.1.1 ensure that the terms of the Order and (if submitted by the Customer) the Application Specification are complete and accurate;
  - 12.1.2 co-operate with the Supplier in all matters relating to the Services;
  - 12.1.3 provide the Supplier, 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;
  - 12.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
  - 12.1.5 prepare the Customer's premises for the supply of the Services in accordance with the instructions of the Supplier;
  - 12.1.6 comply with all applicable laws or safety requirements and the Supplier's instructions in relation to the installation, putting into service and use of the Goods;
  - 12.1.7 remove any obsolete units when the Goods are installed on an existing product, machine or system;
  - 12.1.8 ensure that the machine on to which the Goods are to be installed is oil-free and clean to work on and that adequate machine downtime is planned in advance;
  - 12.1.9 transport and locate the power and control units into suitable locations, providing electrical power and a compressed air supply to the control cabinets, along with extraction ducting from the fan outlets;
  - 12.1.10 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; and
  - 12.1.11 keep and maintain 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.
- 12.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 12.2.1 the Supplier shall without limiting its other rights or remedies 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 to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
  - 12.2.2 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 12.2;
  - 12.2.3 the Supplier shall have the right to charge for waiting time and any additional visits required by individuals it engages on the Contract; and
  - 12.2.4 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.

## 13. CHARGES AND PAYMENT

- 13.1 The price for Goods shall be the price set out in the quotation or as set out in the Order or, if no price is quoted, the price set out in the Supplier's price list as at the Commencement Date. The price of the Goods is exclusive of all costs and charges of packaging, insurance and transport of the Goods, which shall be paid by the Customer when it pays for the Goods, except that the price for systems includes the cost of packaging unless otherwise specified on the quotation.
- 13.2 The charges for Services shall be as set out in the Supplier's quotation or, if no price is quoted, shall be on a time and materials basis:
- 13.2.1 the charges shall be calculated in accordance with the Supplier's standard or hourly rates, as notified to the Customer from time to time; and

- 13.2.2 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 13.3 The Supplier reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
- 13.3.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 13.3.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Application Specification; or
- 13.3.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 13.4 Payment terms are as set out in the Supplier's quotation or as otherwise agreed.
- 13.5 The Customer shall pay each invoice submitted by the Supplier:
- 13.5.1 within 30 days of the date of the invoice or as otherwise agreed in writing; and
- 13.5.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- 13.5.3 time for payment shall be of the essence of the Contract.
- 13.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**), any similar sales tax or any tax that replaces such sales taxes. Any such tax payable in relation to any such amounts shall be paid in addition to those amounts at the same time as payment is due for the supply of the Services or Goods. If the Customer is required under any applicable law to withhold or deduct any amount from the payments due to the Supplier, the Customer shall increase the sum it pays to the Supplier by the amount necessary to leave the Supplier with an amount equal to the sum it would have received if no such withholdings or deductions had been made.
- 13.7 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Bank of England's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 13.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part, unless the Customer has a valid court order from a court in England and Wales requiring an amount equal to or more than such deduction to be paid to the Supplier by the Customer, or unless such rights relied on cannot be excluded by the law of England and Wales or the insolvency laws of the jurisdiction in which the Customer is resident. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

#### **14. INTELLECTUAL PROPERTY RIGHTS**

- 14.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 14.2 The Customer acknowledges that:
- 14.2.1 the Intellectual Property Rights in or associated with the Goods are the Supplier's (or its licensor's) property;
- 14.2.2 nothing in this agreement shall be construed as conferring any licence or granting any rights in favour of the Customer in relation to the Intellectual Property Rights in the Goods; and
- 14.2.3 any reputation in any trade marks affixed or applied to the Goods shall accrue to the sole benefit of the Supplier or any other owner of the trade marks from time to time.
- 14.3 The Customer shall not repackage the Goods and/or remove any copyright notices, confidential or proprietary legends or identification from the Goods.
- 14.4 The Customer shall not use (other than pursuant to this agreement) or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trade mark or trade name which the Supplier owns or claims rights in anywhere in the world.
- 14.5 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 14.6 All Supplier Materials are the exclusive property of the Supplier.

#### **15. CONFIDENTIALITY**

A party (**Receiving Party**) 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 Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 15 shall survive termination of the Contract.

#### **16. INDEMNIFICATION, LIMITATION OF LIABILITY**

- 16.1 Supplier shall indemnify Customer for, and the following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of, losses actually incurred by Customer due to:
- 16.1.1 any breach of this agreement howsoever arising;
- 16.1.2 any representation, misrepresentation (whether innocent or negligent), statement or tortious act arising under or in connection with this agreement.
- 16.1.3 any claim by any third party of intellectual property infringement relating the Intellectual Property Rights in or associated with the Goods or Services.
- 16.2 Except as expressly and specifically provided in this agreement, all warranties, conditions and other terms express or implied by statute or common law or otherwise are, to the fullest extent permitted by law, excluded from this agreement, including but not limited to implied warranties of merchantability, fitness for a particular purpose and all warranties arising from a course of dealing, usage or trade.
- 16.3 Nothing in this agreement excludes the liability of the Supplier:
- 16.3.1 for death or personal injury caused by the Supplier's negligence;
- 16.3.2 for fraud or fraudulent misrepresentation;
- 16.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 16.3.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 16.3.5 defective products under the Consumer Protection Act 1987.
- 16.4 Subject to clause 16.3, the Supplier shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
- 16.4.1 loss of profits; or
- 16.4.2 loss of business; or
- 16.4.3 depletion of goodwill or similar losses; or

- 16.4.4 loss of anticipated savings; or
  - 16.4.5 loss of goods; or
  - 16.4.6 loss of use; or
  - 16.4.7 loss or corruption of data or information; or
  - 16.4.8 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 16.5 Subject to clause 16.2 and 16.3, the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall in all circumstances be limited to £30,000 if the product in relation to which the liability arises is a replacement part and, otherwise, the greater of £100,000 or the price of the Goods and/or Services.

## 17. TERMINATION

- 17.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 17.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 3 months after receipt of notice in writing of the breach;
  - 17.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
  - 17.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
  - 17.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
  - 17.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
  - 17.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 17.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
  - 17.1.8 a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 17.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 17.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.1.2 to clause 17.1.9 (inclusive);
  - 17.1.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
  - 17.1.12 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 17.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract:
- 17.2.1 by giving the Customer one month's written notice;
  - 17.2.2 with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 17.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if:
- 17.3.1 the Customer fails to make pay any amount due under this Contract on the due date for payment; or
  - 17.3.2 the Customer becomes subject to any of the events listed in clause 17.1.2 to clause 17.1.12, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## 18. CONSEQUENCES OF TERMINATION

- 18.1 On termination of the Contract for any reason:
- 18.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 18.1.2 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - 18.1.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
  - 18.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 19. GENERAL

- 19.1 Force majeure:
- 19.1.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, epidemic or default of suppliers or subcontractors.
  - 19.1.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
  - 19.1.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 26 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 19.2 Assignment and subcontracting:
- 19.2.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
  - 19.2.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 19.3 Notices:

- 19.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier (by airmail post or international commercial courier if to an address outside the country of posting), at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- 19.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting (fifth Business Day if to an address outside the country of posting), or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- 19.3.3 This clause 19.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.
- 19.4 Waiver and cumulative remedies:
- 19.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 19.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.
- 19.5 Severance:
- 19.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 19.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 19.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 19.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 19.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.
- 19.9 Dispute resolution:
- 19.9.1 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 these Conditions, the parties shall follow the dispute resolution 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 documentation. On service of the Dispute Notice the Managing Directors of the parties shall attempt in good faith to resolve the Dispute; and
  - (b) if the Managing Directors of the parties are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator but shall be in England.
- 19.9.2 The commencement of a mediation shall not prevent the parties commencing or continuing court proceedings or an arbitration. Any dispute referred to arbitration shall be finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference to this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language used in the arbitral process shall be English. The governing law of the contract shall be the substantive law of England.
- 19.10 Governing law and jurisdiction:
- 19.10.1 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
- 19.10.2 It is the Customer's obligation to acquaint itself and to comply with all applicable requirements and restrictions imposed by law or by governmental and other authorities or corporations relating to the possession, use, import, export, or resale of the Goods. It is the Customer's obligation to ensure that no Goods are exported or imported in violation of the laws of any jurisdiction into or through which the Goods are transported during the course of reaching the Delivery Location. Where necessary, the Customer shall inform the Supplier at a reasonable time before delivery of any documents which it is necessary for the Supplier to provide in order to allow export of the Goods in compliance with the laws of any relevant jurisdiction.