

TERMS AND CONDITIONS OF CONTRACT

GENERAL CONDITIONS OF CONTRACT FOR THE SUPPLY AND INSTALLATION OF GOODS

1. GENERAL

- 1.1. These Conditions supersede any terms of any kind referred to, offered or relied on by the Seller at any stage in the dealings between the Buyer and the Seller, unless the Buyer expressly accepts in writing that such terms shall apply to the Contract. In this context, quotations referred to in the Contract are referenced only for price, delivery and quantity.
- 1.2. Unless the Buyer and the Seller agree otherwise in writing, if there is any inconsistency between the terms of the following documents they will apply in the following order: -
 - 1.2.1. An agreed amendment to the Purchase Order and/or any of these Conditions of Contract;
 - 1.2.2. The terms on the face of the Purchase Order;
 - 1.2.3. The terms of any Attachments;
 - 1.2.4. These Conditions of Contract.

2. DEFINITIONS

- 2.1. 'Buyer' shall mean Lincoln College or any wholly owned or associated subsidiary thereof named on the Purchase Order.
- 2.2. 'Seller' shall mean the person, firm, or company to whom the Purchase Order is addressed.
- 2.3. 'Goods' and 'Services' means the goods and services respectively which are to be supplied by the Seller to the Buyer under the Contract.
- 2.4. 'Packaging' includes bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers.
- 2.5. 'Purchase Order' shall mean the Buyer's purchase order form which details the instructions to the Seller.
- 2.6. 'Contract' shall mean:
 - 2.6.1 an individual contract for the supply of particular Goods and/or Services formed by a document signed by both parties and incorporating these Conditions of Contract or by the acceptance of a Purchase Order; and
 - 2.6.2 except in Clauses 18.1.1 and 18.7, any ongoing contractual relationship between the Buyer and the Seller for the supply of Goods and Services and incorporating these Conditions of Contract.
- 2.7. 'Delivery' shall mean the delivery (including off loading and setting in the designated place) of the Goods and/or the provision of the Services; and 'Deliver' shall be interpreted accordingly.
- 2.8. 'Installation' shall mean the installation of the Goods onto the location and into the operating environment specified by the Buyer; and 'Install' shall be interpreted accordingly.
- 2.9. 'Completion Date' shall mean the date specified on the Purchase Order, or in

any Attachment, for the completion of the Delivery, and/or where applicable, the date by which it is intended that the Acceptance Certificate will be signed by the Buyer.

- 2.10. 'Acceptance Certificate' has the meaning given in Clause 16.4 of these Conditions of Contract.
- 2.11. 'Acceptance Date' means the date of the Acceptance Certificate or, if there is no Acceptance Certificate, the date on which the Buyer has accepted the Goods and Services in accordance with Clauses 16 and 17 of these Conditions of Contract.
- 2.12. 'Amendment' shall mean any variation to the Contract confirmed by an Authorised Purchase Order carrying the words 'Purchase Order Amendment Number
- 2.13. 'Authorised' shall mean signed by the authorised representative of the Buyer who is either named on the face of the Purchase Order, and/or on any signature sheet forming part of the Contract, and/or notified to the Seller by any of those people as being an authorised representative.
- 2.14. 'Price' means the agreed price of the Goods and Services.
- 2.15. 'Fixed Price' shall mean no variation of price nor reconciliation of costs is permitted, other than in accordance with Clause 4.2 of these Conditions of Contract.
- 2.16. 'Specification' means any technical specification for the Goods or Services contained in an Attachment.
- 2.17. 'Site' means the location(s) for the Delivery and Installation.
- 2.18. 'Attachment' means a document attached to these Conditions of Contract or attached to or referred to in a Purchase Order.
- 2.19. 'Manufacturer' means the original manufacturer of the Goods or the person who attaches its brand to the Goods.
- 2.20. 'Intellectual Property Rights' means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, rights in know-how and confidential information, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
- 2.21. 'Warranty Period' means the period applicable to the Goods and Services as defined in Clause 26.2 of these Conditions of Contract.
- 2.22. 'EIR' means the Environmental Information Regulations 2004;
- 2.23. 'EIR Exemption' means any applicable exemption to the Environmental Information Regulations;
- 2.24. 'Exempted Information' means any Confidential Information of the Seller that has been designated by the Parties as potentially falling within the absolute exemption relating to confidentiality in section 41 of FOIA as listed from time to time in the schedule to this Agreement.
- 2.25. 'FOIA' means the Freedom of Information Act 2000;

- 2.26. 'FOIA Exemption' means any applicable exemption to FOIA including, but not limited to, confidentiality (section 41 FOIA), trade secrets (section 43 FOIA) and prejudice to commercial interests (section 43 FOIA);
 - 2.27. 'Information' has the meaning given under section 84 of FOIA;
 - 2.28. 'Request for Information' shall have the meaning set out in FOIA or any request for information under EIR.
3. SPECIFICATION AND GOODS
 - 3.1 The Seller shall supply and, where relevant, install the Goods in accordance with the Specification.
 - 3.2. If requested by the Buyer, the Seller shall provide samples of Goods for evaluation and approval, at the Seller's cost and expense.
 - 3.3. The Seller shall ensure the Goods are fully compatible with any equipment as specified in the Specification.
 - 3.4. The Seller acknowledges that the Buyer relies on the skill and judgment of the Seller in the supply of the Goods and the performance of its obligations under the Contract.
4. PRICES
 - 4.1. Unless specifically agreed in the Contract all prices shall be in UK Pounds Sterling and shall be Fixed Prices for the duration of the Contract, inclusive of carriage, packaging and certification (where required) but exclusive of VAT. Prices shall be deemed to be exclusive of Duty unless otherwise specified on the face of the relevant Purchase Order.
 - 4.2. The Seller shall be obliged to vary the Price downwards in the event of any reduction(s) in the Seller's published price list for those Goods and Services, such that the list prices before discount to the Buyer fall below those ruling at any time prior to the payment of the invoice issued by the Seller for the Goods and/or Services. The Seller shall in any case be expected to vary the Price downwards in the event of any reduction in the cost of materials, labour or transport, such that the costs to the Seller fall below those ruling at the date of their tender, quotation or the award of the Contract/issue of the Purchase Order.
5. AUTHORITY
 - 5.1. The Buyer shall not be liable for any order, amendment, letter of intent, or instructions to proceed with an order unless and until it has been Authorised.
6. SELLERS TO INFORM THEMSELVES FULLY
 - 6.1. The Seller shall be deemed to have examined the Specification and these Conditions of Contract. No claims from the Seller for additional payment will be allowed on the grounds of misinterpretation of the Specification (whether it was prepared by the Buyer or by the Seller) or these Conditions of Contract if the Seller could reasonably have sought clarification from the Buyer prior to the issue of the Purchase Order/award of the Contract.
 - 6.2. Unless otherwise agreed in writing, the Seller shall be obliged to examine the Site.
7. THE INSTALLATION SITE
 - 7.1. Unless otherwise specified in an Attachment and/or otherwise agreed in

writing and/or stated on the face of the Purchase Order, the Seller shall be required to undertake a visit to the Site, and shall: -

- 7.1.1. issue a report detailing work to be carried out to prepare the Site for the Installation, or;
 - 7.1.2. issue a certificate, stating that the Site is suitable and acceptable for the Installation to commence.
- 7.2. The report issued by the Seller in accordance with Clause 7.1.1 above must supply adequate information in sufficient time to enable the Buyer to prepare the Site for the Installation, and enable the Buyer to provide: -
- 7.2.1. a suitable supply of electric current and such other mains services as maybe required;
 - 7.2.2. all other required electrical and mechanical items and fittings, as specified by the Seller at the time of awarding the Contract and agreed by the Buyer (other than the Goods);
 - 7.2.3. such facilities and environmental conditions as defined on the Purchase Order and/or in any Attachment.
- 7.3. In circumstances where the Seller issues a report in accordance with Clause 7.1.1, the Seller shall be required to re-examine the Site upon the notification by the Buyer that any work specified in the report has been completed and issue a certificate in accordance with Clause 7.1.2, or invoke the provisions of Clause 7.1.1 as appropriate.
- 7.4. The Buyer at its own expense shall ensure that such preparation and provision are made such that the Seller is able to Deliver the Goods and/or Services on the date specified for Delivery and Installation on the Purchase Order and/or in any Programme of Delivery and/or Installation contained in any Attachment. In the event that such preparation and provision are unsuitable for the purpose of the Installation as the result of an act or default of one party, then any costs which the other party can demonstrate as being reasonably and necessarily incurred due to that act or default shall be recoverable from the defaulting party.

8. ACCESS

- 8.1. The Buyer shall afford to the authorised personnel of the Seller at all reasonable times and with prior agreement, such access to the Site, (but not necessarily sole access) as may be necessary for the inspection of the Site and for the execution of Delivery and Installation, providing always that the Buyer shall have the right to refuse to admit to, or order the removal from, the Site of any person employed by, or acting on behalf of, the Seller, or any authorised sub-Seller who, in the opinion of the Buyer (which shall be final), is not a fit and proper person to be on the Site. Action under this Clause shall not relieve the Seller of any of its obligations under the Contract.
- 8.2. The Seller must take reasonable care to ensure that, in the execution of the Delivery and Installation, they do not interfere with the operations of the Buyer, its employees or any other Seller employed on the Site.
- 8.3. The Seller may work on the Site only with the permission of the Buyer.
- 8.4. The Seller shall, without prejudice to any other obligations to the Buyer with regard to access to the Site: -

- 8.4.1. comply at all times with its statutory obligations in respect of Health and Safety at Work and the Buyer's policies, procedures and/or reasonable instructions in respect of Health and Safety;
 - 8.4.2. comply with any policies, procedures and/or reasonable instructions of the Buyer with regard to security when attempting to gain access to and egress from, and at all times when working on, the Site;
 - 8.4.3. comply with any policies, procedures and/or instructions of the Buyer in respect of the use of any services and/or facilities to be provided by the Buyer in accordance with the Contract and/or as may otherwise be reasonably required in order that the Seller is able to meet its obligations under the Contract;
 - 8.4.4. comply with any policies, procedures and/or instructions of the Buyer in respect of the Site and/or any other of the Buyer's sites to which the Seller may have access for any purpose;
 - 8.4.5. ensure that any Installation and/or other Services which require the attendance of the Seller on the Site be undertaken during the Buyer's standard operational hours unless otherwise agreed by the Buyer; and
 - 8.4.6. leave the Goods and the Site in a clean and tidy condition at the end of each visit and upon completion of the Installation.
- 8.5. The Seller shall ensure that its personnel and the personnel of any agent and/or sub-Seller of the Seller shall comply with its obligations set out in Clauses 8.1 to 8.4 inclusive above.

9. QUALITY

- 9.1. In the absence of a Specification or sample, any Goods supplied in accordance with the Contract will be new and of good construction, sound materially, of adequate strength and free of defects in design materials and workmanship, and will be designed and manufactured so as to be safe and without risk to health when properly used.
- 9.2. The Goods and Services supplied must comply with the express terms of the Contract and all implied conditions, warranties and terms contained in the Sale of Goods Act 1979, and the Supply of Goods and Services Act 1982, as applicable to the Contract and as amended by any related statutes, and any statutory re-enactment(s) or modification(s) thereof.
- 9.3. The Goods and Services supplied must comply with all appropriate European Union Directives applicable and relevant at the time of the Delivery (in which case all Goods supplied must be clearly endorsed as being fully compliant as aforesaid by the application of the CE Mark in a position on the Goods which meets the requirements of the Directives).
- 9.4. If the Goods and Services comply with any British Standards Institution, European Union, International Standards Organisation or other applicable standard the Seller must, on the request of the Buyer, provide a copy of the standard free of charge.
- 9.5. The Seller will at the request of the Buyer provide the Buyer with copies of any relevant testing or compliance certificates for the Goods and Services.

10. STANDARDS OF THE INSTALLATION

- 10.1. The work required of the Seller to complete Installation shall be as defined on the Purchase Order and/or in any Attachment.
 - 10.2. Without reducing the scope of any obligations imposed on the Seller by the terms of the Contract with regard to the standard of the Installation, the Seller shall use good quality materials, techniques and standards to execute the Installation with the care, skill and diligence required in accordance with the best industry practice.
11. MISTAKES IN INFORMATION
- 11.1. The Seller shall be responsible for and shall pay any extra costs occasioned by any discrepancies, errors or omissions in drawings, documentation or other information supplied in writing by the Seller whether or not approved by the Buyer, provided that such discrepancies, errors or omissions are not due to inaccurate drawings or information and decisions supplied in writing to the Seller by the Buyer.
 - 11.2. The Buyer shall be responsible for, and shall pay any additional costs which the Seller can demonstrate as being reasonably and necessarily incurred as a direct result of the Seller acting upon any discrepancies, errors or omissions in any drawings, information and decisions supplied in writing to the Seller, by the Buyer. Any claims under this Clause must be made in writing, and will only be paid if accepted by the Buyer by means of the issue of an Amendment.
12. PROGRAMME OF INSTALLATION
- 12.1. The Installation must be carried out in accordance with any timetable, or before any date, specified in the Purchase Order or in any Attachment.
13. PACKAGING, MARKING AND DELIVERY
- 13.1. All Goods must be adequately protected against damage and deterioration in transit and delivered, carriage paid. Any information related to the handling and storage of goods upon receipt must be clearly marked on the packaging and accompanying paperwork. The Goods shall be at the Seller's risk until delivered to the Buyer at the location specified in the Contract. Unless otherwise agreed the Seller will collect and dispose of all Packaging at no cost to the Buyer.
 - 13.2. No deliveries shall be made to the Site without the prior permission of an authorised officer of the Buyer, and the Seller will seek that permission at least forty-eight (48) hours before the intended delivery time.
 - 13.3. The Seller shall provide all necessary labour, materials and plant required for the Delivery and Installation.
 - 13.4. The Goods shall be transported and off-loaded at the sole risk and expense of the Seller. The Seller shall be responsible for the safe custody of any equipment which is the property of the Seller whilst it is held on the Buyer's property until the Acceptance Date, after which the Seller shall remove such equipment leaving the Site and premises in a clean and tidy condition. For the avoidance of doubt, any goods and/or equipment which are the property of the Seller shall be held on the Site at the sole risk of the Seller. The Buyer shall not be liable for any loss or damage to equipment as aforesaid howsoever caused, and shall have the right to charge for storage of the equipment in the event that the Seller fails to remove their equipment from

Site within a reasonable period of time following Delivery.

14. AMENDMENTS AND VARIATIONS

14.1. The Seller shall not alter any of the Goods and/or Services, except as directed in writing by the Buyer. The Buyer shall have the right, from time to time during the execution of the Contract, to direct the Seller to add to or omit, or otherwise vary, the Goods and/or Services, and the Seller shall carry out such variations and be bound by the same conditions, so far as applicable, as though the said variations were stated in the Contract. No payment will be made for the unauthorised supply of goods and related services (if any).

15. DELAYS BY THE SELLER

15.1. Any time or period for Delivery, despatch, Installation and/or completion shall be the essence of the Contract. If the Seller fails to complete: -

15.1.1.any specific portion of the Installation by the date(s) specified in the Purchase Order, an Attachment or an Amendment;

15.1.2.the Installation of the Goods and/or Services by the Completion Date (or such revised dates as may be agreed in accordance with Clause 14 of these Conditions of Contract)

the Buyer shall have the right exercisable by giving notice to the Seller, at its sole discretion, either to: -

15.1.3.cancel the Contract whereupon the Buyer's rights shall be as described in Clause 18 hereof, or

15.1.4.proceed with the fulfilment of the Contract whereupon the Buyer shall have the right to recover from the Seller any losses which they may have suffered as set out in Clause 15.2 hereof.

15.2. In the event that the Buyer shall elect to proceed with the fulfilment of the Contract, and the Buyer shall have suffered a loss, then without prejudice to the Buyer's rights as aforesaid the Buyer shall have the right to deduct, as liquidated damages and not by way of a penalty, from the Price either: -

15.2.1.The percentage stated in the Purchase Order and/or in any Attachment, and agreed at the time of awarding the Contract, of the total Price for each week or part thereof between the Completion Date and the Acceptance Date; or

15.2.2.where no percentage is specified, a sum equivalent to 1% (one per cent) of the total Price for each week or part thereof between the Completion Date and the Acceptance Date.

Such deductions so made shall be in full satisfaction for the failure of the Seller as aforesaid and are a pre-estimate of the loss likely to be suffered by the Buyer as a result.

15.3. In any event the amount so deducted shall not exceed:

15.3.1.the maximum percentage of the total Price stated in the Purchase Order and/or in any Attachment where percentages have been agreed in accordance with Clause 15.2.1. or

15.3.2.a maximum of ten per cent (10%) of the total Price as stated in the Purchase Order or any Attachment, if the circumstances described in Clause 15.2.2 prevail.

Such deductions so made shall be in full satisfaction for the failure of the Seller as aforesaid and are a pre-estimate of the loss likely to be suffered by the Buyer as a result.

16. ACCEPTANCE TESTS

- 16.1. The Seller shall be required to undertake Acceptance Tests as detailed on the Purchase Order and/or in any Attachment.
- 16.2. Where the details of the Acceptance Tests to be implemented in accordance with this Contract are not specified in the Purchase Order or in any Attachment, the Acceptance Tests to be administered shall be defined (in the case of Goods) as those procedures published by the Manufacturer, or, where no such procedures are published and in the case of Services, the Acceptance Tests shall be those which are generally accepted as enabling the Buyer to satisfy themselves that the Goods and/or Services or specific portion thereof have been Delivered and/or Installed such that they are in accordance with the Contract.
- 16.3. If Goods are to be utilised with and/or installed on or with goods supplied by sources other than the Seller, including, but not limited to, computer application software to be utilised on or with computer hardware and operating system software to be supplied by the Seller in accordance with the Contract, the Buyer shall have the right to require that Acceptance Tests are undertaken in respect of the Goods used in that way or installed on those other goods.
- 16.4. The Seller shall give to the Buyer seven (7) days written notice, or such shorter notice as may be agreed, of the date when it will be ready to commence Acceptance Tests.
- 16.5. Unless otherwise specified in the Contract, it shall be for the Seller to provide the necessary equipment, labour and things of all kinds to carry out the Acceptance Tests.
- 16.6. The Acceptance Tests shall take place on the dates specified in the Purchase Order or in any Attachment, or such dates as the Buyer shall notify to the Seller in writing, unless otherwise agreed.
- 16.7. If the Seller fails to make such tests within the time stipulated, the Buyer reserves the right to undertake the Acceptance Tests specified. All Acceptance Tests undertaken by the Buyer shall be at the risk and expense of the Seller, unless the Seller shall establish to the satisfaction of an authorised officer of the Buyer that the tests were not being delayed, in which case such tests so made shall be at the risk and expense of the Buyer.
- 16.8. If the Goods and/or Services or any portion thereof fail to pass the Acceptance Tests, repeat tests shall be carried out within a reasonable time by the Seller. In the event that the Goods and/or Services or any portion thereof, are not in accordance with the Contract, then without prejudice to the Buyer's rights under Clauses 15 and 18 of these Conditions of Contract the Buyer shall have the right to: -
 - 16.8.1. require the Seller to supply, free of all charges, such additional or replacement goods and/or services as may be necessary to enable the Goods and/or Services to pass the Acceptance Tests;

16.8.2. accept and retain such of the Goods and/or Services as the Buyer may consider expedient at such reduced price as may be agreed by the Buyer and the Seller;

16.8.3. contract with a third party to enable the Goods and/or Services to pass the Acceptance Tests. In such circumstances any costs incurred shall be for the Seller's account, and shall be deducted from any sums due under the Contract, or otherwise under the Contract;

16.8.4. reject the Goods and/or Services, where they are not in accordance with the Contract.

17. ACCEPTANCE

17.1. If the Goods or Services fail to conform with the specification and/or the Contract, whether by reason of not being of the required quality, or fit for the purpose stipulated either in the specification issued by the Buyer or in accordance with the Seller's published specifications, and whether the Goods and/or Services have been subjected to Acceptance Tests or otherwise, the Buyer shall without prejudice to their rights under Clauses 15 and 18 Conditions of Contract have the right to reject such Goods and/or Services within a reasonable time after Delivery and/or Installation. The Buyer shall be obliged to give the Seller reasonable opportunity to replace any rejected Goods and/or provide Services with Goods and/or Services which conform to the Specification and/or the Contract, but shall thereafter, without prejudice to any other right which the Buyer may have against the Seller, have the right to purchase such Goods and/or Services of the same or substantially equal quality and/or specification elsewhere. Any additional costs which may be incurred by the Buyer in purchasing such Goods and/or Services as aforesaid shall be for the Seller's account. When Goods are rejected they will be stored at the Site, and subsequently returned, at the Seller's sole risk and expense.

17.2. Neither Delivery nor Installation constitutes acceptance of the Goods or Services by the Buyer.

17.3. The making of any payment due under the Contract shall not constitute acceptance and shall not prejudice the Buyer's right of rejection.

17.4. Unless it is specified in the Purchase Order or any Attachment that an Acceptance Certificate is not required, then as soon as the Acceptance Tests appropriate to, or specified for, the Goods and/or Services have been completed and the Goods and/or Services have passed the Acceptance Tests, an authorised officer of the Buyer shall issue an Acceptance Certificate which will state the Acceptance Date and any outstanding defects in the Installation or relevant portion thereof. The Seller undertakes to rectify such defects immediately and without delay and, in any case, by a specific date, which shall be binding, and which shall be agreed in writing by both parties within seven (7) working days after the Acceptance Date. If the Seller fails to remedy such defects within the period specified and agreed, the Buyer's rights shall be as set out in Clauses 15 and 18 of these Conditions of Contract.

18. CANCELLATION

18.1. In accordance with Clause 15 hereof, any time or period for Delivery, despatch, Installation and/or completion shall be of the essence of the

Contract. In circumstances where the Buyer invokes the provisions of Clause 15 of these Conditions, and makes a claim in respect of the Delivery and/or the Installation or any part thereof being subject to a delay due to the fault of the Seller, the Buyer shall be entitled at their sole and absolute discretion either to:

18.1.1. cancel the Contract and/or terminate the Contract and/or any part thereof forthwith, in which case the Buyer shall have the right to claim reimbursement from the Seller for all losses suffered as a result of the delay, the cancellation and/or termination, or

18.1.2. proceed with the fulfilment of the Contract in which case the Buyer's rights shall be as set out in Clause 15 hereof.

The right in Clause 18.1.1 shall apply in all of the events listed at Clauses 18.2 to 18.6 inclusive below. The right in Clause 18.1.2 shall apply only in the events listed at Clauses 18.2 to 18.4 to inclusive, below.

- 18.2. The Seller fails to deliver Goods and/or Services in accordance with the terms of the Contract.
- 18.3. The Seller fails to make progress with the Contract so as to jeopardise the purpose of the Goods and/or Services and/or the Contract.
- 18.4. The Seller being given a reasonable period to rectify the situation, fails to provide adequate replacement Goods and/or an adequate or satisfactory Service.
- 18.5. The Seller becomes bankrupt or insolvent, or has a receiving order made against it, or compounds with its creditors or, being a corporation, commences to be wound up or is put into administration or if the Seller attempts to carry on its business under a receiver for the benefit of any of its creditors.
- 18.6. The Seller is the subject of a takeover by or merger with another entity.
- 18.7. In the event that the Buyer shall elect to cancel or terminate a Contract and/or terminate any framework agreement or other ongoing contractual relationship for the supply of Goods and Services for any of the foregoing reasons the Buyer shall not be liable for any unfulfilled commitment.

19. PATENTS AND OTHER RIGHTS

19.1. The Seller shall fully indemnify the Buyer against all actions, claims, demands, proceedings, damages, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights by the use or possession of the Goods and/or any product which is a tangible output of the Services subject to the following: -

19.1.1. the Buyer shall promptly notify the Seller in writing of any alleged infringement of which they have notice;

19.1.2. the Buyer must make no admissions without the Seller's consent;

19.1.3. the Buyer, at the Seller's request and expense shall allow the Seller to conduct and/or settle all negotiations and litigation, and give the Seller all reasonable assistance. The costs incurred or recovered in such negotiations or litigation shall be for the Seller's account.

19.2. If at any time any allegation of infringement of any Intellectual Property Rights is made in respect of the Goods and/or Services or in the Seller's

reasonable opinion is likely to be made, the Seller may, at their own expense, modify or replace the Goods and/or Services or any portion(s) thereof, without detracting from the overall performance of the Goods and/or any product which is a tangible output of the Services, the Seller making good to the Buyer any loss of use during modification or replacement, so as to avoid the infringement. The provisions of Clause 14 shall then take effect as if the Buyer had requested a variation save that the Seller shall not be entitled to any increase to the Price.

- 19.3. Where development forms part of the Contract the Buyer will own any Intellectual Property Rights arising from such development and in the case of rights which can be prospectively assigned, the Seller hereby assigns those rights to the Buyer. In the case of other rights, the Seller agrees to assign them to the Buyer as and when they arise and agrees to do all acts and execute all documents reasonably required by the Buyer at the Buyer's expense to perfect its title to those rights or to enable their registration anywhere in the world.
- 19.4. The Seller shall treat all information provided by the Buyer as confidential and use such information only for purposes of performing the Contract or meeting its obligations under the Contract. Where drawings or other data are issued by the Buyer or are prepared for the Buyer by the Seller, the Seller shall exercise proper custody and control and return/dispose of such in accordance with the Buyer's instructions. For the avoidance of doubt nothing in these Conditions of Contract is intended to confer any Intellectual Property Rights in the drawings or data, and their creation constitutes development as set out in Clause 19.3.

20. SOFTWARE

- 20.1. The Seller shall be responsible for providing in accordance with the Contract, all software and associated documentation where: -
- 20.1.1.the Goods comprise of and/or include computer hardware and/or
 - 20.1.2.the software and associated documentation is necessary for the satisfactory operation of the Goods or the use of the Services and/or
 - 20.1.3.where the provision of such software and associated documentation is specified in the Purchase Order and/or in any Attachment.
- 20.2. Where the provision of the software is not subject to separate licence arrangements: -
- 20.2.1.the Seller hereby grants to the Buyer a perpetual right to use the software (whether modified as hereinafter provided or not) on the Goods or in conjunction with the Services as the case may be;
 - 20.2.2.the Seller will provide the software in both object code and source code;
 - 20.2.3.the Buyer shall in perpetuity have the right to modify or add to any of the software without reference or obligation to the Seller;
 - 20.2.4.all Intellectual Property Rights of the Seller in the software shall remain vested in the Seller;
 - 20.2.5.the Buyer shall have the Intellectual Property Rights in any modifications or additions made to the software, but shall in no case

acquire the Intellectual Property Rights in the software itself;

20.2.6.the Buyer shall not assign or sub-licence to any third party to have the use of the software, including any translation, compilation, adaptation, enhancement or any other version of the software, without the prior written consent of the Seller;

20.2.7.the Buyer shall only make so many copies of the software as are reasonably necessary for operational security and use.

20.3. Where the Seller provides third party software in accordance with the Contract or otherwise in order to enable them to meet their obligations under the Contract, the Seller shall either: -

20.3.1.procure for the Buyer a non-exclusive, perpetual and irrevocable licence to use the Software under a separate licence agreement, or

20.3.2.grant to the Buyer a sub-licence to use the third-party software under a separate licence agreement.

20.4. The Seller hereby warrants that they have the right to grant to the Buyer the rights in the software and any third-party software as set out in these Conditions of Contract.

21. STANDARD OF PERFORMANCE

21.1. The Seller shall ensure, and undertakes to ensure that the Goods maintain the standard of performance specified and/or achieved that are either: -

21.1.1.in the Manufacturer's published specification for the Goods, or

21.1.2.in the Specification, or

21.1.3.in the Purchase Order or in any Attachment, or

21.1.4.as demonstrated in the Acceptance Tests and accepted by the Buyer, or

21.1.5.a combination of the above.

for either the period of the maintenance contract if the Goods are to be maintained by the Seller, or the Warranty Period if the Goods are not to be maintained by the Seller.

21.2. If the Buyer claims that the Goods and/or Services or any portion thereof, are not achieving and maintaining the standard of performance specified in the Contract and the Seller wishes to dispute that claim, then, notwithstanding prior acceptance of the Goods and/or Services in accordance with Clauses 16 and 17 hereof the onus shall be on the Seller to undertake at its own expense all necessary investigations to disprove the Buyer's claims, or to prove that such failure to maintain requisite standards is due to the fault of the Buyer.

22. INDEMNITY AND INSURANCE

22.1. The Seller will keep the Buyer indemnified in respect of

22.1.1 all loss and/or expense which results during proper use directly or indirectly from defective materials, goods, workmanship or design supplied by the Seller;

22.1.2 all loss and/or expense and all actions, claims, demands, costs and expenses incurred by or made against the Buyer which arise from any

Services provided and/or advice given or anything done or omitted to be done under the Contract by the Seller;

- 22.1.3 any claims for loss of or damage to property or injury to any person by reason of the Seller's negligence, or any act or omission on the part of the Seller's employees, sub-Sellers, or agents arising out of the performance of the Contract;
- 22.1.4 any act or omission of any of the Seller's personnel in connection with the performance of the Services.
- 22.1.5 any damage to the Buyer's property (including any materials, tools or patterns sent to the Seller for any purpose).
- 22.1.6 breach of any warranty given by the Seller in relation to the Goods or Services;
- 22.1.7 any claim that the Goods infringe, or their use or resale infringes the patent, copyright, design right or trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
- 22.1.8 any liability under the Consumer Protection Act 1987 in respect of the Goods;
- 22.1.9 all liability, loss, damages, injury, costs, claims and expenses (including legal expenses) suffered or incurred by the Buyer or in connection with the WEEE Regulations 2004 and the ROHS Regulations 2004 or any amendment thereto and of all other statutory provisions, rules and regulations so far as they are applicable.

22.2 During the term of the Contract and for a period of six (6) years thereafter the Seller shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Buyer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

23. ASSIGNMENT AND SUB-CONTRACTING

- 23.1. The Seller shall not, without first obtaining the written consent of the Buyer sub-contract the Contract or any part thereof, or make any sub-contract with any person or persons for the execution of any part of the Contract, but the restrictions contained in this Clause shall not apply to the supply of materials or minor details, nor to any part of the Contract for which a sub-Seller is named in the Purchase Order or any Attachment.
- 23.2. In circumstances where the Buyer gives written consent to the Seller to assign or sub-contract specific parts of the Contract, such written consent shall not relieve the Seller from any liability or obligations under the Contract, and the Seller shall be responsible for the acts, defaults or neglects of their sub-Seller, their agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Seller. When requested by the Buyer the Seller will provide a copy of any sub-contract documentation at no charge.
- 23.3. The Buyer may by written notice to the Seller assign the benefits of the

Contract, and if required by the Buyer, the Seller will execute any novation agreement necessary to transfer its obligations under the Contract.

24. PAYMENT

- 24.1. Provided the Goods and/or Services have been received and comply with the requirements of the Contract and have been accepted by the Buyer in accordance with the Contract, the Seller shall be entitled to claim payment of the Price or the percentage of the Price, stated in the Purchase Order or any Attachment. Payment shall be due at the end of the month following the date of the invoice, or the date of receipt by the Buyer of correct invoice documentation, whichever is the later and provided always that the Goods and/or Services have been properly delivered and/or accepted by the Buyer as being in accordance with the Contract.
- 24.2. Value Added Tax, where applicable, must be shown separately on all invoices.
- 24.3. Payment may be delayed but no prompt discount shall be forfeited by the Buyer, if the Seller fails to mark the Buyer's Purchase Order number on the consignment, package packing notes, invoices, monthly statements and all other correspondence.
- 24.4. Any payment made shall be without prejudice to the Buyer's rights, should the Goods or Services prove unsatisfactory or not in accordance with the Contract.
- 24.5. If at any time at which payment would fall to be made in accordance with the provisions of this Clause there shall be any defect due to the fault of the Seller in or affecting any part or portion of the Goods and/or Services in respect of which such payment is claimed, the Buyer shall have the right to retain the whole of such payment, provided that in the event of such defect being of a minor character, and not such as to affect the use of the Goods and/or Services, or the said portion thereof for the purpose intended without serious risk, the Buyer shall not retain a greater sum than represents the cost of making good the said defect. Any sums retained by the Buyer under this Clause shall be paid to the Seller upon the said defect being made good.
- 24.6. In circumstances where the Buyer invokes the provisions of Clause 15 of these Conditions, and makes a claim in respect of the delivery or any part thereof being subject to a delay due to the fault of the Seller, the Buyer reserves the right to deduct the appropriate percentage of the Price as agreed and detailed on in the Purchase Order or any Attachment from the payment falling due upon the completion of the delivery or specific part thereof.
- 24.7. Each invoice shall show the prices attributable to each item of Goods and Services and be in sufficient detail to enable the Buyer to identify and assess the amounts claimed. The Seller undertakes to supply such other particulars of costings as the Buyer may require and to permit these to be verified by inspection of books, accounts and other documents and records.
- 23.8. The Seller shall have the right to charge the Buyer interest on any invoices that are not in dispute and are overdue for payment. The rate of interest shall be 2% over the official dealing rate of the Bank of England but shall otherwise be calculated in accordance with the Late Payment of

Commercial Debts (Interest) Act 1998.

25. RECOVERY OF SUMS DUE

- 25.1. Whenever under a Contract any sum of money shall be recoverable from, or payable by, the Seller, the same may be deducted from any sum then due or which at any time thereafter may become due to the Seller under the Contract, or under any other contract with the Buyer. Exercise by the Buyer of their rights under this Clause, shall be without prejudice to any other rights or remedies available to the Buyer under the Contract.
- 25.2. Any overpayment by the Buyer to the Seller whether of charges or of Value Added Tax shall be a sum of money recoverable from the Seller.

26. WARRANTY

- 26.1. The Seller shall be responsible for making good at their own expense on the Site, and within the time scales specified in Clause 26.4, any defect in or damage to any of the Goods and/or output of the Services provided as described in Clause 26.3 which may develop during the Warranty Period.
- 26.2. Where the Goods are to be utilised immediately, the warranty period shall be 12 months from the Acceptance Date and otherwise the Warranty Period shall be 18 months from the Acceptance Date.
- 26.3. Defects covered by this warranty are: any failure of the Goods to comply with the Specification and/or fulfil the functions or meet the level of performance specified in the Contract and accepted by the Buyer by the issue of an Acceptance Certificate or otherwise, which arises from: -
- 26.3.1. defective materials, including software, workmanship or design (other than a design furnished or specified by the Buyer for which the Seller has disclaimed responsibility in writing within a reasonable time, after the receipt of the Buyer's instructions), or,
- 26.3.2. any act or omission of the Seller done or omitted during the Warranty Period.
- 26.4. The Seller must respond within a maximum of 8 working hours or such other period as specified in the Purchase Order or any Attachment to a request for service under the provisions of the warranty, and must, wherever possible effect a repair within a maximum of a further 7 days.
- 26.5. If any such damage or defect cannot be remedied within the time scale detailed in Clause 26.4, or the Seller fails to respond and remedy the damage or defect within a reasonable time, the Buyer may proceed to engage the services of a third party to remedy the damage or defect. Any service so undertaken shall be at the Seller's risk and expense, and any costs incurred by the Buyer shall be for the Seller's account. Should the Buyer invoke the provisions of this Clause, the utilisation of a third party's services shall not affect the warranty provisions for the remainder of the Warranty Period, nor the ability of the Buyer to enter into a maintenance agreement with the Seller, and the Seller shall be responsible for meeting its obligations thereafter.
- 26.6. Should the Buyer invoke the provisions of Clause 26.5, this shall be without prejudice to any other rights which the Buyer may have against the Seller in respect of the Seller failing to remedy such defect or damage.

- 26.7. Where a defect involves a fault inherent in the design of the Goods and/or specification of Services provided, or any part thereof, the Seller shall, at their own expense, promptly carry out such re-design as may be necessary to prevent a recurrence of the defect, and upon completion shall rectify the fault in the Goods and/or standard of the Services provided. Any such re-design or re-specification shall be accomplished in such a manner as to ensure that the performance and operation of the Goods and/or Services is not adversely affected by virtue of such re-design and/or re-specification from the standard as accepted by the Buyer in accordance with these Conditions of Contract.
- 26.8. The provisions of this Clause 26 shall not apply to any defect or damage which arises or develops as a result of any alteration, addition or attachment to the Goods where: -
- 26.8.1. the Seller has published by means of publication in their, or the Manufacturer's specifications, a notification stating that the alteration, addition or attachment will downgrade the standard of performance of the Goods and/or invalidate the warranty;
- 26.8.2. the Seller has otherwise notified the Buyer in writing that a specific alteration, addition or attachment will adversely affect the standards of performance of the Goods and/or invalidate the warranty;
- 26.8.3. the warranty is invalidated by a negligent act or omission of the Buyer, provided always that it shall be for the Seller to prove that any defect or damage has been caused by the alteration, addition or attachment. Save as aforesaid, the Buyer shall have the right to make any alteration and/or addition and/or attachment to the Goods, whether such alteration, addition and/or attachment is made by employees of the Buyer, by the Seller and/or by an appropriately qualified third-party source, without reference to the Seller and the Seller shall not be relieved of any of their obligations to provide warranty services in accordance with this Clause 26.
- 26.9. All services under the provision of this warranty shall be provided free of all charges, and shall be carried out on the Site. Goods shall not be removed from the Site for the provision of warranty services without the permission of an authorised officer of the Buyer.
- 26.10. In circumstances where Goods are authorised to be removed from the Site, the Goods shall at all times remain the property of the Buyer, but the risk inherent in the Goods shall pass to the Seller from the time the Goods are removed from their normal operating environment until they are returned and, where appropriate, reinstalled into the same operating environment, or any other operating environment designated by an authorised officer of the Buyer; appropriate acceptance tests have been concluded where necessary, and acceptance documentation has been signed by the Buyer.
- 26.11. The Seller shall be solely liable to rectify any loss or damage howsoever caused prior to such acceptance as a matter of urgency and, in any case, within a time scale to be agreed by both parties at the appropriate time.
- 26.12. Where Goods are held at the Seller's site the Goods must be readily identifiable as the property of the Buyer and the Seller must keep appropriate records thereof.

- 26.13. Should the Seller be affected by any incidents such as bankruptcy or liquidation the Seller must identify such Goods to the Receiver, etc. as the property of the Buyer.
- 26.14. Neither this Clause nor Clause 28 is intended to limit any statutory rights which may accrue to the Buyer and this Clause and Clause 28 are in addition to any standard warranty offered by the Seller or the Manufacturer.
- 26.15. The Seller warrants that the materials, components, assemblies or equipment provided as part of the Goods does not contain more than the permitted level of any of the restricted substances listed in Regulation 8 of the ROHS Regulations 2004 or any amendment thereto and of all other statutory provisions, rules and regulations so far as they are applicable.

27. LOAN EQUIPMENT

- 27.1. In circumstances where Goods or any specific components or parts thereof are removed from the Site in order to provide warranty services in accordance with Clause 26 above, or for any other reason as may be agreed by the parties, the Seller shall, upon the request of an authorised officer of the Buyer, be required to provide Goods of an identical or nearest equivalent specification on a free loan basis for the entire period of time for which the original Goods and/or specific components or parts thereof are held on the Seller's site.
- 27.2. Any Goods supplied on loan in accordance with this Clause will remain the property of the Seller but will be held on site at the Buyer's risk. The risk shall return to the Seller immediately the Goods are removed from use by the Buyer and replaced by the original Goods. The Buyer undertakes adequately to insure the Goods against loss or damage whilst they are in use on the Buyer's premises, but will not accept any liability for failure or breakdown of the Goods due to wear and tear or faulty manufacture. The Seller must repair or replace Goods which are loaned to the Buyer and subsequently develop a fault within the timescales specified in Clause 26.4.

28. REPLACEMENT GOODS AND/OR SERVICES

- 28.1. In the event that all or any of the Goods and/or Services supplied in accordance with the Contract shall consistently fail to achieve and maintain the standards of performance either: -
- 28.1.1. as specified in the published specification for the Goods and/or Services as issued by the Manufacturer, and/or the service provider and/or the Seller;
 - 28.1.2. as set out in the Specification;
 - 28.1.3. as specified in the Purchase Order or any Attachment;
 - 28.1.4. as demonstrated in the Acceptance Tests and/or accepted in writing by the Buyer;
 - 28.1.5. a combination of the above, and provided that the Goods have been installed and the Goods and/or any physical output of the Services are being used by the Buyer in accordance with the installation and/or operating instructions: -
 - 28.1.6. issued and supplied by the Seller;
 - 28.1.7. issued and/or published by the Manufacturer and/or the service

provider;

28.1.8. where no instructions are provided, in accordance with generally accepted good practice appropriate to the Goods and/or Services;

28.1.9. a combination of the above,

the Seller hereby warrants for the Warranty Period that the Goods and/or Services, or specific portion(s) thereof affected by such circumstances shall be replaced with goods and/or services of equal or nearest equivalent higher specification forthwith and free of all charges. This warranty and any services provided in fulfilment of it are not intended to remove any rights which the Buyer may have under Clause 26.

- 28.2. For the avoidance of doubt, "consistently fail" shall be defined as the Goods requiring a minimum of four (4) visits to provide service repairs, or a minimum of four (4) return visits to provide the Services to satisfactory standards.
- 28.3. Service calls which the Seller can prove as having been made necessary due to any negligent act or omission of the Buyer, or which are defined as return calls to replace parts shall be excluded from the total number of calls referred to in Clause 28.2 hereof.
- 28.4. If the Seller removes the Goods from the Site to undertake warranty repairs, and fails to return the Goods repaired and operating to the standards of performance as defined in Clause 28.1 within a maximum period of seven (7) working days, and/or fails to provide an adequate service within the same period, from the date of receiving the initial request from the Buyer, the failure shall be defined as one service call added to the cumulative total referred to in Clause 28.2 for each seven (7) working day period as aforesaid.
- 28.5. Replacement Goods and/or Services supplied by the Seller under this Clause 28 shall be supplied in accordance with these Conditions of Contract. The Goods and/or Services shall be supplied with a full warranty service as defined in, and for the Warranty Period (except that the period will commence on the date that the replacement Goods and/or Services are accepted by the Buyer). The Buyer's rights to require the Seller to replace Goods and/or Services in accordance with this Clause shall apply to any replacement Goods and/or Services as if they were the Goods and/or Services originally supplied.

29. SAFETY

- 29.1. In accordance with the requirements of the Health & Safety at Work Act 1974 and any re-enactment or amendment thereof, any safety precautions required for the handling of the Goods are to be clearly indicated on each consignment.
- 29.2. Hazardous Goods must be marked in accordance with Chemicals, (Hazard Information and Packaging for Supply) Regulations (CHIP2) 1994 and subsequent amendments. Risk and safety phrases must be in English.
- 29.3. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. The Seller shall observe the requirements of U.K. and International Agreements relating to the packing, labelling and carriage of hazardous Goods.
- 29.4. Hazard data sheets must be supplied with the delivery for all hazardous materials, and the information contained in the data sheets must meet the legal requirements of the Health & Safety at Work Act, and the Health and Safety Executive Guidance Note HS/G27 as amended and in force as at the

date of Delivery.

- 29.5. Seller shall comply with the requirements of UK and international legislation and agreements relating to the supply, packaging, labelling and carriage of hazardous goods.
- 29.6. The Seller shall ensure the Goods comply with current health and safety legislation and the legislation implementing any relevant EC Directive. The Buyer may require the Seller to show that the Goods bear a CE mark and may ask for a copy of the EC Declaration of Conformity.
- 29.7. The Seller represents and warrants to the Buyer that the Seller has satisfied itself that:
 - 29.7.1 all necessary tests and examinations have been made or will be made prior to delivery of Goods to ensure that the Goods are designed, manufactured, supplied and installed so as to be safe without risk to the health or safety of persons using the same;
 - 29.7.2 that it has made available to the Buyer adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health.
- 29.8 In any event, the Seller will comply with the duties imposed on it by the Health and Safety at Work etc Act 1974 or any amendment thereto and of all other statutory provisions, rules and regulations so far as they are applicable. The Seller shall indemnify and keep indemnified the Buyer against all actions, suits, claims, demands, losses, charges, costs and expenses (including legal expenses and disbursements) which the Buyer may suffer or incur as a result of or in connection with any breach of this Condition 28.

30. STATUTORY AND OTHER REGULATIONS

- 30.1. The Seller shall in all matters arising in the performance of the Contract conform with all Acts of Parliament and with all orders, regulations and bye-laws made with statutory authority by Government Departments or by local or other authorities that shall be applicable to the Contract; the Seller shall also observe through their staff and work people any rules applicable to the Site. The Buyer shall on request afford all reasonable assistance to the Seller in obtaining information as to local conditions. The Seller shall not in the performance of the Contract in any manner endanger the safety or unlawfully interfere with the convenience of the public. The cost to the Seller in meeting their requirements of this Clause shall be included in the Price, except as provided under Clause 30.3 hereof.
- 30.2. The Seller shall give the Buyer such prior written notice as the Buyer may require of the Delivery of any Goods having a toxic hazard or other hazard to the safety or health of persons or property, identifying those hazards and giving full details of any precautions to be taken by the Buyer on the delivery of such Goods and their subsequent storage or handling, and shall at all times observe their obligations under Clause 29 of this Contract.
- 30.3. In the event that either party incurs costs which it would not otherwise have incurred and which are caused by the other party's failure to comply with any law or any order, regulation or bye-law having the force of law, the amount of such costs shall be reimbursed by the other party.

31. WAIVER

31.1. No delay, neglect or forbearance on the part of either party in enforcing against the other party any of these Conditions of Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Contract.

32. CONFIDENTIALITY

32.1. Without prejudice to Clause 19.4 of this Contract, each party ('the Receiving Party') shall keep confidential all information of the other party ('the Disclosing Party') obtained under or in connection with the Contract, whether such information (which shall include, but not be limited to information obtained by the Seller when visiting the Site) is related to the Contract or otherwise, shall not divulge the same to any third party without written consent of the Disclosing Party, and shall use it only for the purposes of the Contract.

32.2. The Receiving party undertakes to keep the Confidential Information disclosed by the disclosing party secure and not to disclose it to any third party [except to its employees [and professional advisers] who need to know the same for the Purpose, who know they owe a duty of confidence to the disclosing party and who are bound by the confidentiality obligations within this Contract. The Parties acknowledge that failure on the part of the receiving party to abide by this Agreement may cause irreparable harm to the disclosing party, for which damages will not be an adequate remedy. Accordingly, the disclosing party shall have the right to seek to obtain an injunction, through the arbitral process set forth herein, to prevent any further violations of this Agreement.

32.3. The provisions of this Clause shall not apply to any information if such information is: -

32.3.1.in the public domain, other than through the fault of the Receiving Party, or

32.3.2.in the possession of the Receiving Party before its disclosure by Disclosing Party; or

32.3.3.obtained from a third party who is free to divulge the information concerned without a continuing restriction on its disclosure; or

32.3.4.independently developed by the Receiving Party.

32.4. The Seller and the Buyer shall divulge the information of the other party only to those employees, including the agents and/or employees of any authorised sub-Seller in accordance with Clause 32.6 below, who are directly involved in the Contract and/or the Installation and/or use of the Goods and/or provision of the Services, and shall ensure that such employees are aware of and comply with these obligations as to confidentiality.

32.5. Where Goods, or specific parts thereof are deemed to be beyond economic repair and/or the Seller elects to replace parts under the provisions of the Warranty service in accordance with Clause 26 hereof, and the Goods and/or parts thereof have, or are likely to have, data stored upon them, the Seller must erase all data from them and, if requested by the Buyer, provide written certification to confirm erasure. The Buyer reserves the right to

request that relevant Goods, and/or specific parts or components thereof are returned to the Buyer for disposal. Such requests shall be made by the Buyer in writing.

- 32.6. In circumstances where the Seller is an agent of the Manufacturer, the Seller must obtain a written policy statement regarding the disposal of Goods upon which data is stored. Such a statement so submitted shall not excuse the Seller from its obligations under this Clause 32.
- 32.7. The Seller must ensure that its sub-Sellers are bound by the requirements of this Clause, and shall be held responsible for any breaches of confidentiality committed by them.
- 32.8. The provisions of this Clause shall continue in perpetuity, notwithstanding the cancellation, termination or discharge of the Contract.

33. CONSUMABLE SUPPLIES

- 33.1. The Buyer reserves the right to procure consumable supplies to be used on or with the Goods, and suitable for the Goods from the Seller or such other source as the Buyer may deem appropriate. Such procurement of consumables from a source other than the Seller shall not invalidate the rights of the Buyer under these Conditions of Contract, and shall in no way affect the provisions under warranty claims made in accordance with Clause 26, nor the Buyer's rights under Clause 28 of these Conditions of Contract provided that the consumables utilised meet the minimum standards as published by the Seller or the Manufacturer, or where no published standards are available, the standards generally accepted as being appropriate to the Goods concerned.
- 33.2. In the event that the Seller shall claim that the use of specific consumables is adversely affecting the standards of performance of the Goods and/or increasing the cost to the Seller of meeting their obligations to provide warranty services in accordance with Clause 26 and/or replacement goods in accordance with Clause 28 of this Contract, it shall be for the Seller to prove that the consumables do not meet the requisite minimum standards, and are affecting the Goods and/or increasing their costs as aforesaid. If the Seller proves that the consumables do not meet the requisite minimum standards the Buyer shall cease using the consumables concerned and procure alternative consumables which meet the standards required.

34. MAINTENANCE

- 34.1. If required by the Buyer before the end of the Warranty Period, the Seller shall enter into a separate contract for the maintenance of the Goods.
- 34.2. If a maintenance contract commences before the end of the Warranty Period the maintenance charges during the Warranty Period shall reflect the Seller's obligations under Clause 26 of this contract.

35. SPARES

- 35.1. Where appropriate to the Goods supplied in accordance with this Contract, the Seller shall make available to the Buyer, or any nominated third-party maintenance source, on request and with reasonable despatch and at reasonable prices, all spares and replacement parts as the Buyer, or nominated third party maintenance source, shall require for the Goods.
- 35.2. The Seller shall maintain a supply of such spares or replacement parts for a

period of six (6) years from the date of Delivery or the Acceptance Date, whichever is the later.

- 35.3. Such spares or replacement parts shall be required to be fully compatible with, and maintain as a minimum the same levels of performance as, the Goods originally supplied, but need not be identical to those items. The warranty in Clause 26 shall apply to the spares or replacement parts as if they were part of the original Goods.
- 35.4. If during this period the Seller, or their sub-Seller intend to discontinue the manufacture of spares or replacement parts for the Goods the Seller shall forthwith give notice to the Buyer of such intention, and advise the Buyer of any third-party source from which the spares or replacement parts will be available, or to which third party source the Seller intends to provide drawings, patterns, specifications and other information.
- 35.5. If during the stipulated period of six (6) years the Seller or its sub-Seller either: -
- 35.5.1. fails to make available to the Buyer with reasonable despatch, at reasonable prices all such spares or replacement parts as the Buyer or nominated third party maintenance source shall require for the Goods; or
- 35.5.2. becomes insolvent or has a receiving order made against them, or commences to be wound up (not being a member's winding up for the purposes of reconstruction),
- then the Seller shall so far as it is legally entitled to do so, and if so required by the Buyer, as soon as practicable, deliver to the Buyer or their nominated third party maintenance source, free of charge such drawings, patterns, specifications and other information as referred to in Clause 35.4, and which the Buyer, or its nominated third party source, shall be entitled to retain for such time only as necessary for the exercise by the Buyer of its rights under this Clause, and which if the Seller so requires, shall be returned by the Buyer to the Seller at the Buyer's cost and expense.

36. ATTACHMENTS TO THE GOODS

- 36.1. The Buyer shall have the right to attach to, or install onto the Goods any goods (including but not limited to software) which the Buyer considers to be appropriate and necessary to enable the Goods to be utilised to the fullest extent as required by the Buyer. If the Buyer attaches or installs goods then this shall not have the effect of degrading the performance of the Goods, and shall not relieve the Seller from meeting its obligations to provide warranty services in accordance with Clause 26 or replacement goods in accordance with Clause 28 hereof provided that: -
- 36.1.1. the goods attached or installed are not specified in any of the Seller's and/or the Manufacturer's published specifications as having the effect of degrading the standards of performance or invalidating the Buyer's rights under Clauses 26 and 28 as aforesaid;
- 36.1.2. the Seller has not otherwise notified the Buyer in writing that the attachment or installation of specific goods will degrade the standards of performance or invalidate the Buyer's rights under Clauses 26 and 28 as aforesaid; and

36.1.3.the goods have been attached or installed in accordance with the published instructions of the supplier of the goods concerned.

36.2. In the event that the attachments and/or installation is made by the Buyer, and the Seller can prove that such attachment or installation is adversely affecting the standard of performance of the Goods or otherwise increasing the frequency of the provision of warranty services, then the Seller shall be entitled to be reimbursed any associated costs which the Seller can demonstrate as being reasonably and necessarily incurred in providing warranty services or returning the Goods to the normal standards of performance in accordance with this Contract.

37. OPERATING MANUALS

37.1. The Seller shall supply to the Buyer all operating manuals and other documentation necessary for the satisfactory operation of the Goods, and in any event all documentation as specified in the Purchase Order or any Attachment. If, after the Acceptance Date, the operating manuals and documentation need updating or replacing the Seller shall be responsible for notifying the Buyer of the availability of such updates or replacements, and shall supply them at reasonable prices, upon receipt of appropriate Purchase Order documentation. The Seller shall provide the operating manuals and other documentation in the media format in which they are available at the appropriate time.

38. ARBITRATION

38.1. Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to arbitration under the rules of the London Court of International Arbitration.

39. PROPERTY AND RISK

39.1. Property and risk in the Goods shall pass to the Buyer at the time of Delivery, but such passing shall not prejudice either the Buyer's right to reject for non-conformity with specification or any other rights that the Buyer may have. However, if advance or progress payments are made, title but not risk shall pass to the Buyer as soon as items are allocated to the Contract. All items so allocated shall be adequately marked and recorded as being the property of the Buyer, and where such items are stored on the Seller's site, held in a separate bonded area suitable for such storage purposes.

40. FORCE MAJEURE AND EXTENSION OF TIME

40.1. If, by any reason of any act or default of the Buyer or any other circumstance which is beyond the control of the Seller arising after the date of the Contract, the Seller has been delayed or impeded in the completion of the Contract provided that the Seller shall immediately have given to the Buyer notice in writing of his claim for an extension of time, the Buyer shall on receipt of such notice grant the Seller from time to time in writing either prospectively or retrospectively such extension of the time for the completion of the Contract as may be reasonable. This Clause only applies if:

39.1.1.the Seller shall, immediately upon becoming aware that any such delay has been or is likely to be caused, give notice in writing to the Buyer specifying the circumstances causing or likely to cause the delay and the actual or estimated extent of the delay caused or likely

to cause the delay;

39.1.2.the Seller could not reasonably be expected to have foreseen at the date of the Contract that a delay would, or was likely to, occur;

39.1.3.the Seller uses its best endeavours to prevent any delay being caused and to minimise any such delay to the satisfaction of the Buyer; and

39.1.4. such delay is not attributable to any negligence, default or improper conduct of the Seller.

40.2. If the Buyer has granted the Seller an extension of time as set out in Clause 40.1, and the Contract is not completed within the extended period, the Buyer may by giving notice to the Seller terminate the Contract with immediate effect.

40.3. The Buyer shall not be liable for any delay or failure to perform any of its obligations under this Agreement if the delay or failure results from events or circumstances beyond its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, flood or industrial disputes, and the Buyer shall be entitled to a reasonable extension of its obligations.

41. CORRUPT GIFTS AND PAYMENT OF COMMISSION

41.1. The Seller shall not offer or give or agree to give any person in the service of the Buyer any gift or consideration of any kind as an inducement or reward for doing or forbearing to do so or for having done or forborne to do an act in relation to the obtaining or execution of the Contract or any other contract with the Buyer.

41.2. Any breach of this Clause by the Seller or the Seller's personnel or anyone acting on the Seller's behalf (with or without its knowledge) or commits an offence under the Bribery Act 2010 in relation to this Contract or any other contract with the Buyer, shall entitle the Buyer to terminate the Contract and recover from the Seller the amount of any loss resulting from such termination and/or to recover from the Seller the amount of value of any such gift, consideration or commission.

41.3. Where the Contract has been terminated under Clause 41.2 of this Clause the powers given by Clause 15 (Delays by the Seller) and Clause 18 (Cancellation) shall apply as if there has been a failure to complete the Contract.

41.4. In any dispute, difference or question arising in respect of: -

41.4.1.the interpretation of this Clause 41 (except so far as the same may relate to the amount recoverable from the Seller under Clause 41.2 above in respect of any loss resulting from such termination of the Contract); or

41.4.2.the right of Buyer to determine the Contract; or

41.4.3. the amount of value of any such gift, consideration or commission;

the decision of Buyer shall be final and conclusive.

42. RACE RELATIONS

- 42.1. The Seller shall comply and shall procure that any other third parties employed engaged or contracted by the Seller in order to fulfil its obligations under the provisions of the Contract (“Sub-Sellers”) shall comply with:
- 42.1.1 all relevant equality legislation, including, without limitation, the Race Relations Act 1976 and the Race Relations Amendment Act 2000 and subordinate legislation made under those Acts and any legislation amending or replacing it or them from time to time (“the Equality Legislation”); and
 - 42.1.2 any policies and procedures established by the Buyer in respect of, and to ensure compliance with, the Equality Legislation (“the Buyer’s Equality Policies”).
- 42.2. Without prejudice to any other rights and remedies accruing to the Buyer under the Contract, in the event that the Seller and/or any Sub-Seller fails to comply with the provisions of the Equality Legislation and/or fails to comply with the Buyer’s Equality Policies, the Buyer shall have the right to either: -
- 42.2.1 cancel any Purchase Orders issued to the Seller and terminate the Contract forthwith, without liability of any kind whatsoever; or
 - 42.2.2 proceed with the fulfilment of the Contract, in which case the Seller and any Sub-Sellers must comply with any measures specified by the Buyer which the Buyer deems, at the Buyer’s sole and absolute discretion, to be appropriate and necessary to ensure compliance with the Equality Legislation and the Buyer’s Equality Policies. Such measures to be undertaken to achieve compliance shall be undertaken at the Seller’s risk and expense, and, unless otherwise agreed in writing by the Buyer before the measures are taken, without charge to the Buyer; or
 - 42.2.3 require that the Sub-Seller in question is replaced (at no cost to the Buyer) with another Sub-Seller acceptable to the Buyer.

43. FREEDOM OF INFORMATION

- 43.1 The Seller acknowledges that the Buyer is subject to legal duties which may require the release of information under FOIA and/or EIR and that the Buyer may be under an obligation to provide Information on request. Such Information may include matters relating to, arising out of or under this Agreement.
- 43.2 Notwithstanding anything in this Agreement to the contrary, in the event that the Buyer receives a Request for Information, the Buyer will be entitled to disclose all Information to the extent that it is obliged to do so in order to respond to that request in accordance with FOIA and/or EIR, save that in relation to any such Information that is:
- 43.2.1 Exempted Information the Buyer will as soon as reasonably practicable after receiving a valid request under FOIA or EIR to disclose such Information, notify the Seller of that fact and (unless requested or agreed otherwise by the Seller) rely on the FOIA Exemption in relation to confidentiality (section 41 FOIA) and will not subject to Clause 43.3:
 - (a) confirm or deny that the Exempted Information in question is held by the Buyer;

- (b) disclose the Exempted Information requested;
- 43.2.2 Confidential Information of the Seller that is not Exempted Information ("Seller Confidential Information"), the Buyer will consult with the Seller as soon as reasonably practicable and will not subject to Clause 43.3:
 - (a) confirm or deny that the Seller Confidential Information in question is held by the Buyer;
 - (b) disclose the Seller Confidential Information requested;
to the extent that in the Buyer's reasonable opinion (having taken into account the views of the Seller) that exemption is or may be applicable in accordance with the relevant section of FOIA and/or EIR in the circumstances.
- 43.3 Subject to Clause 43.4, nothing in this Agreement will prevent the Buyer from complying with any valid decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and/or EIR in relation to any Exempted Information or Seller Confidential Information, provided that prior to complying with any such notice the Buyer has consulted with the Seller and (if requested to do so by the Seller, acting reasonably) appealed to the Information Tribunal against the notice and that appeal has been unsuccessful.
- 43.4 On request from the Seller, the Buyer having notified the Seller of any order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner or by any court or tribunal in relation to the disclosure of any Exempted Information or Seller Confidential Information, the Buyer shall bring such actions and appeals against the disclosure of such Information to the Information Tribunal or to such other courts and tribunals (having jurisdiction) as the Seller may reasonably require except where the Buyer has received a written opinion from counsel experienced in FOIA related matters (such opinion to be provided to the Seller upon request) that such an action or appeal has no reasonable prospect of success.
- 43.5 The Seller will fully indemnify the Buyer against any reasonable direct costs incurred by the Buyer in seeking to maintain the withholding of Information pursuant to Clause 43.4 provided that:
 - 43.5.1 the Buyer (acting in good faith) notifies the Seller in response to the Seller's request under Clause 43.4 that it has no wish to pursue any action or appeal for its own purposes and but for that request would disclose the Information; and
 - 43.5.2 the Buyer will use reasonable endeavours to consult with the Seller before incurring any such costs.
- 43.6 The schedule to this Agreement (Exempted Information) may be amended from time to time by written agreement of the parties, such agreement not to be unreasonably withheld or delayed by either party.
- 43.7 In the event that the Buyer receives a Request for Information and requires the Seller's assistance in obtaining such Information, the Seller will respond to any related request for assistance from the Buyer, at its own cost and within five (5) days of receiving the request for assistance.

44. NOTICE

44.1 Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

45. INSOLVENCY

45.1 The Buyer may at any time by notice in writing terminate the Contract without compensation to the Seller if:

45.1.1 the Seller, being an individual or where the Seller is a firm, any partner in that firm at any time becomes bankrupt or has a receiving order or administration order made against him or makes any composition or agreement with or for the benefit of his creditors, or makes any conveyance or assignment for the benefit of his creditors, or purports to do so or if in Scotland he becomes insolvent or bankrupt, or any application is made under any bankruptcy act for the time being in force for sequestration of his estate, or a trust deed is granted by him for behoof of his creditors; or

45.1.2 the Seller, being a company, is the subject of a proposal for a voluntary arrangement; or has a petition for an administration order or a petition for a winding up order brought against it; or passes a resolution for a winding up order; or makes any composition, arrangement, conveyance or assignment for the benefit of its creditors; or purports to do so; or a receiver or any other person is appointed in respect of its undertaking or of all or any of its property. Provided always that such determination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Buyer.

46. TERMINATION ON DEFAULT

46.1 Either party shall have the right to terminate the Contract if the other party is in Default of any of the conditions of the Contract and such Default shall not have been remedied to the satisfaction of the injured party within a period of thirty (30) days of written notification of such Default to the other party. Notice of termination shall be given to the offending party in writing with immediate effect and such termination shall be without prejudice to the rights of the parties accrued to the date of determination.

47. BREAK

47.1 The Buyer shall, in addition to its power under any other provision of the Contract, have power to terminate the Contract at any time by giving the Seller written notice to expire at the end of the period of notice specified for the purpose of this Condition in the Contract. If no such period is specified at the end of one month and upon expiration of the notice the Contract shall be determined without prejudice to rights of the parties accrued to the date of determination but subject to the operation of the following provisions:

47.1.1 if such notice is given the Buyer shall indemnify the Seller against commitments, liabilities or expenditure which would otherwise

represent an unavoidable loss by the Seller by reason of the determination of the Contract;

47.1.2 the Buyer shall not be liable to pay any sum which, when taken together with any sums paid or due or becoming due to the Seller under the Contract, shall exceed such total sum as would have been payable under the Contract if the Goods had been delivered in accordance with the requirements of the Contract;

47.1.3 If hardship to the Seller should arise from the operation of condition 47.1 it shall be open to the Seller to refer the circumstances to the Buyer which, on being satisfied that such hardship exists, shall make such allowance, if any, as in its opinion is reasonable, and the decision of the Buyer on any matter or thing arising out of this Condition shall be final and conclusive.

48. SEVERABILITY

48.1. If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

49. SPECIAL PROVISIONS

49.1. In the event of any conflict or inconsistency between these general Conditions and any special conditions contained within the Contract, such special conditions shall prevail.

50. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

50.1. The Seller shall not:

50.1.1. make any press announcements or publicise this Contract or its contents in any way; or

50.1.2. use the Buyer's name or brand in any promotion or marketing or announcement of orders; without the prior written consent of Buyer, which shall not be unreasonably withheld or delayed.

51. THIRD PARTIES

51.1. A person who is not a party to the Contract shall not have any rights to enforce its terms.

52. GOVERNING LAW AND JURISDICTION

52.1 The Contract, and any dispute or claim arising out of or in connection with it shall be governed by the law of England, subject to the provisions of Clause 38.1 and shall be subject to the exclusive jurisdiction of the courts of England and Wales.