

## Denley Hydraulics Limited – Conditions Of Sale

### 1. INTERPRETATION

In these Conditions, **DENLEY HYDRAULICS LIMITED** (CRN: 04063402) is called the 'Company'. The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 Definitions:

**"Business Day"**: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**"Company Materials"**: has the meaning given in clause 8.1.13.

**"Conditions"**: these terms and conditions as amended from time to time in accordance with clause 19.9.

**"Contract"**: the contract between the Company and the Purchaser for the supply of Products and/or Services in accordance with these Conditions.

**"Control"**: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

**"Data Protection Legislation"**: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679) (for so long as it is directly applicable in the UK), the Data Protection Act 2018 and all other applicable legislation and regulatory requirements in force from time to time relating to the use of personal data.

**"Deliverables"**: the deliverables produced by the Company for the Purchaser, as set out in the Order.

**"Force Majeure Event"**: has the meaning given to it in clause 18.

**"Intellectual Property Rights"**: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**"Order"**: the Purchaser's order for the supply of Products and/or Services, as set out in the Purchaser's purchase order form or the Purchaser's written acceptance of the Company's quotation, as the case may be.

**"Product(s)"**: the plant, machinery, equipment, components or other products (or any part of them) set out in the Order and any applicable Product Specification, to be supplied by the Company to the Purchaser.

**"Product Specification"**: the specification for the Products, including any relevant plans or drawings, that is agreed in writing by the Purchaser and the Company.

**"Purchaser"**: the person or firm who purchases the Products and/or Services from the Company.

**"Services"**: the services, including the Deliverables, supplied by the Company to the Purchaser as set out in the Service Specification, which may include installation, commissioning and testing services.

**"Service Specification"**: the description or specification for the Services provided in writing by the Company to the Purchaser.

1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 A reference to a party includes its successors and permitted assigns.

1.4 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.6 A reference to **writing** or **written** includes email but not fax.

### 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Purchaser to purchase Products and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order at which point and on which date the Contract shall come into existence.

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. The Purchaser waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Purchaser that is inconsistent with these Conditions.

2.4 Any samples, drawings, illustrations, advertising or descriptive matter (including particulars, dimensions and weights) issued by the Company in relation to the Products or the Services, whether contained in the Company's tender, catalogues, brochures or on its website or otherwise shall be deemed to be approximate and are issued or published for the sole purpose of giving an approximate idea of the Services and/or Products described in them. They shall not form part of the Contract nor have any contractual force.

2.5 The Product Specification and Service Specification shall form part of the Contract provided that (unless expressly agreed otherwise in writing by the Company) all particulars, dimensions and weights shall be deemed to be approximate.

2.6 Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 30 days from its date of issue, or 60 days where the Purchaser's main place of business is overseas.

2.7 All of these Conditions shall apply to the supply of both Products and Services except where application to one or the other is specified.

### 3. PRODUCTS

3.1 The Products are described in the Product Specification.

3.2 To the extent that the Products are to be manufactured in accordance with a Product Specification supplied by the Purchaser, the Purchaser shall indemnify the Company 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 costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Product Specification. This clause shall survive termination of the Contract.

3.3 The Company reserves the right to amend the Products and/or Services (or respective Specifications):

3.3.1 where doing so would not materially affect the nature or quality of the Products or Services; and

3.3.2 if required by any applicable statutory or regulatory requirement, code of practice or in accordance with best industry practice, and the Company shall notify the Purchaser in any such event.

### 4. DELIVERY

4.1 The Company shall deliver the Products by such method and to the location set out in the Order or such other location as the parties may agree in writing (**Delivery Location**) at any time after the Company notifies the Purchaser that the Products are ready. Unless otherwise agreed in writing by the Company, Products to be shipped within the UK shall be delivered EXW Company's premises, and Products to be shipped outside the UK shall be delivered FOB UK port.

4.2 Any dates quoted for delivery of the Products are approximate only, and the time of delivery is not of the essence.

4.3 Unless expressly agreed otherwise in writing by the parties (for example where the Company has agreed to unload and install the Products) Delivery of the Products shall be completed on the making available by the Company of the Products at the Delivery Location.

4.4 The Company shall have no liability for any delay in delivery or failure to deliver the Products to the extent that such delay or failure is caused by a Force Majeure Event or the Purchaser's failure to provide the Company with adequate delivery instructions or any other information relevant to the supply or installation of the Products.

4.5 If the Purchaser fails to take delivery of the Products or any Deliverables on the date notified by the Company for delivery (or the Company reasonably believes the Purchaser will fail to do so):

4.5.1 delivery of the Products and/or Deliverables shall be deemed to have been completed at 9.00 am on the date notified by the Company for delivery; and

4.5.2 the Company shall store the Products and/or Deliverables until delivery takes place, and charge the Purchaser for all related costs and expenses (including insurance).

4.6 If 10 Business Days after the date notified by the Company for delivery the Purchaser has not taken delivery of the Products or any Deliverables, the Company may resell or otherwise dispose of part or all of the Products charge the Purchaser any costs incurred in connection with the same, and for any shortfall below the price of the Products.

4.7 The Company may deliver the Products 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 Purchaser to cancel any other instalment.

4.8 Any inspection or test of the Products prior to delivery shall be subject to the prior written agreement of the parties and the Company may charge the Purchaser separately for any such inspections or tests.

- 4.9 Where the parties have agreed that the Products shall be tested by the Company following delivery:
- 4.9.1 the Purchaser shall cooperate with the Company with regards to such testing (including by attending the testing where required by the Company); and
  - 4.9.2 the Company shall have sole responsibility for and discretion in determining whether such tests have been passed, and any delay or failure by the Purchaser in attending such tests or verifying the results of the same shall not be relevant for the purpose of determining whether the tests have been passed.
5. **QUALITY OF PRODUCTS**
- 5.1 For the purpose of this clause the **Warranty Period** shall be:
- 5.1.1 where the Company is engaged to provide installation and commissioning services, the shorter of (a) 12 months from the date of commissioning, or (b) 15 months from the date on which the Company informs the Purchaser that the Products are ready for delivery; or
  - 5.1.2 where the Company is not engaged to provide installation and commissioning services, 12 months from the date of delivery; or
  - 5.1.3 such other warranty period as may be agreed in writing between the parties.
- 5.2 Subject to the remaining provisions of this clause, the Company warrants that for the duration of the Warranty Period the Products shall:
- 5.2.1 conform in all material respects with the Product Specification;
  - 5.2.2 be free from material defects in design, material and workmanship.
- 5.3 Subject to clause 5.4 and clause 5.5, the Company shall, at its option, repair or replace any products which do not comply with the warranty at clause 5.2 if:
- 5.3.1 the Purchaser gives notice of the defect in writing during the Warranty Period and within 7 days of the date on which the Purchaser became aware or ought reasonably to have become aware of the defect (having carried out inspections and testing in accordance with good industry practice);
  - 5.3.2 the Company is given a reasonable opportunity of examining such Products and is satisfied that the Products do not comply with the warranty at clause 5.2; and
  - 5.3.3 the Purchaser (if asked to do so by the Company) returns such Products to the Company's place of business, securely packed and at the Purchaser's risk and cost.
- 5.4 For replacements under clause 5.3, the Company's liability shall extend to 'parts only' and the Company shall not be liable for (and may charge the Customer for) any other costs, including labour, of removing any defective Products (or parts thereof) or the cost of fitting any replacement Products (or parts thereof). Any defective Products shall become the sole property of the Company upon removal.
- 5.5 The Company shall not be liable for the Products' failure to comply with the warranty in clause 5.2 if:
- 5.5.1 the Purchaser makes any further use of such Products after giving a notice in accordance with clause 5.3;
  - 5.5.2 the defect arises because the Purchaser failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice regarding the same;
  - 5.5.3 any maintenance or servicing of the Products has been completed by someone other than the Company or a provider approved by the Company in writing;
  - 5.5.4 the defect arises as a result of the Products being operated outside of their intended use, or combined or interfaced with other machinery or products that have not been approved by the Company in writing;
  - 5.5.5 the defect arises as a result of improper or defective construction works or siting not carried out by the Company, or other similar external influences which impact the functionality of the Products, including in relation to any structures to which the Products are affixed or connected or the environment in which the Products are used;
  - 5.5.6 the defect arises as a result of the Company following any instruction, drawing, design or Product Specification supplied by the Purchaser;
  - 5.5.7 the Purchaser alters or repairs such Products without the written consent of the Company;
  - 5.5.8 the defect arises as a result of fair wear and tear, wilful damage, negligent act or omission, abnormal working conditions, carelessness or improper treatment; or
  - 5.5.9 the Products differ from the Product Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.6 In the case of Products (or parts thereof) not manufactured by the Company, the Purchaser shall only be entitled to the benefit, insofar as it may be passed on to the Purchaser, of any rights the Company may have against the supplier of such Products and the Company's liability in such cases is limited to making the benefit of such rights available to the Purchaser.
- 5.7 Except as provided in this clause 5, the Company shall have no liability to the Purchaser in respect of the Products' failure to comply with the warranty set out in clause 5.1.
- 5.8 The Warranty Period shall not renew for any repaired or replacement Products supplied by the Company.
6. **TITLE AND RISK**
- 6.1 The risk in the Products shall pass to the Purchaser in accordance with the Incoterm 2020 stated in the Order, or (in the absence of the same) on completion of delivery.
- 6.2 Title to the Products shall not pass to the Purchaser until the Company receives payment in full (in cash or cleared funds) for the Products and any other products that the Company has supplied to the Purchaser.
- 6.3 Until title to the Products has passed to the Purchaser, the Purchaser shall:
- 6.3.1 not remove, deface or obscure any identifying mark on or relating to the Products;
  - 6.3.2 maintain the Products in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;
  - 6.3.3 notify the Company immediately if it becomes subject to any of the events listed in clause 16.2 or clause 16.3; and
  - 6.3.4 give the Company such information as the Company may reasonably require from time to time relating to:
    - 6.3.4.1 the Products; and
    - 6.3.4.2 the ongoing financial position of the Purchaser.
- 6.4 At any time before title to the Products passes to the Purchaser, the Company may require the Purchaser (at its cost) to deliver up all Products in its possession that have not been irrevocably incorporated into another product and if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Products are stored in order to recover them.
7. **SUPPLY OF SERVICES**
- 7.1 The Company shall supply the Services to the Purchaser in accordance with the Service Specification in all material respects.
- 7.2 The Company shall use all reasonable endeavours to meet any performance dates for the Services agreed in writing by the parties, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Company warrants to the Purchaser that the Services will be provided using reasonable care and skill.
- 7.4 Where the Company is engaged to provide installation services, when installation has been completed the Purchaser will be notified accordingly and will be asked to witness the commissioning of the Product and to sign the Company's handing-over Standard Acceptance Certificate. In the event that the Purchaser does not provide such a witness the Product will nevertheless be commissioned and if found satisfactory by the Company will be deemed to have been handed over and a certificate to that effect will be issued and be deemed to have been signed by the Purchaser. Installation is deemed to be complete if the Product is fit for commercial use notwithstanding minor omissions or defects which do not materially affect such use.
- 7.5 If the Company is responsible only for supervising the installation of the Products, the Purchaser shall be responsible for supplying suitable labour, equipment and materials to carry out the installation.
- 7.6 The provisions of the Schedule shall apply where installation services are to be completed by the Company outside of the UK.
8. **PURCHASER'S OBLIGATIONS**
- 8.1 The Purchaser shall:
- 8.1.1 ensure that the terms of the Order and any information it provides in the Service Specification and the Product Specification are complete and accurate;
  - 8.1.2 co-operate with the Company in all matters relating to the Services;
  - 8.1.3 provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - 8.1.4 prepare the relevant site for the delivery of Products and the supply of the Services and provide suitable access to and unhindered possession of the site at which any installation services are to be carried out by the Company (Site), including a clear working area providing a flat and level surface for lay-out purposes and a suitable local power supply adjacent to any point of work both for the operation of the equipment and for portable electric tools and also all necessary weights, slings and measuring instruments. The Purchaser shall also be responsible for ensuring that where a mobile crane is required for erection purposes, it will have free and clear

- access to Site and will be able to operate and unload directly under the installation point;
- 8.1.5 be responsible for the provision of site welfare facilities in accordance with good industry practice including, but not limited to a site office, toilets, washing & changing facilities;
  - 8.1.6 be responsible for general safety precautions at the Site (for example the provision of temporary traffic control systems, flagmen, warning lamps etc.);
  - 8.1.7 ensure that any plant or equipment provided by the Purchaser for use in connection with the performance of the Contract is adequate, in good working order, safe for use and in compliance with all applicable laws;
  - 8.1.8 be responsible for all civil works, foundations brickwork and other structures at the Site;
  - 8.1.9 be responsible for compliance with applicable laws and regulations and any other requirements binding on the Purchaser;
  - 8.1.10 be solely responsible for ensuring that any equipment and/or structures in conjunction with which the Products are to be used and which are not supplied by the Company are in all respects suitable and adequate for the purpose, and are properly installed;
  - 8.1.11 obtain and maintain all licences, permissions and consents which may be required for the performance of the Contract, including any necessary import licences and for any fees or charges that may be levied by the issuing authority. Any applicable import licences must have sufficient validity to permit the manufacture of the Products, the obtaining of suitable shipping space and the negotiation of appropriate banking documents;
  - 8.1.12 comply with all applicable laws, including health and safety laws;
  - 8.1.13 keep all materials, equipment, plant, tooling, documents and other property of the Company (**Company Materials**) at the Purchaser's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation;
  - 8.1.14 comply with any additional obligations set out in the Service Specification and the Product Specification; and
  - 8.1.15 inspect the Products for defects or shortfall promptly upon delivery and in accordance with best industry practice.
- 8.2 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Purchaser or failure by the Purchaser to perform any relevant obligation (**Purchaser Default**):
- 8.2.1 without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Purchaser remedies the Purchaser Default, and to rely on the Purchaser Default to relieve it from the performance of any of its obligations in each case to the extent the Purchaser Default prevents or delays the Company's performance of any of its obligations;
  - 8.2.2 the Company shall not be liable for any costs or losses sustained or incurred by the Purchaser arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 8.2; and
  - 8.2.3 the Purchaser shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Purchaser Default.
- 9. CHARGES AND PAYMENT**
- 9.1 The price for Products and Services shall be the price set out in the Order. Unless otherwise agreed in writing, the price quoted for installation is based on work being carried out continuously during the Company's normal working hours.
  - 9.2 Unless expressly stated otherwise in writing, the price shall be exclusive of all costs and charges of packaging, insurance, transport, training and other ancillary costs and expenses (including hotel, subsistence, travelling and any other expenses reasonably incurred by the individuals whom the Company engages in connection with the Contract), which shall be invoiced to the Purchaser by the Company.
  - 9.3 The Company shall be entitled to increase its prices in accordance with BEAMA (British Electrical and Allied Manufacturers Association) Contract Price Adjustment formula, modified as follows:
    - 9.3.1 Labour: the price shall be adjusted at the rate of 35% of the price per 1.0 per cent difference between the BEAMA Labour Cost Index for Electrical engineering last published before the date of tender or quotation and the average of the Index figures published for the last (one or two) thirds of the delivery period, this difference being expressed as a percentage of the former index figure;
    - 9.3.2 Materials: The price shall be adjusted at the rate of 65% of the price per 1.0 per cent difference between the Price Index Figure of Materials used in the Electrical Machinery Industry last published in the Trade and Industry Journal before the date of tender or quotation and the index figure last published before the end of the first three fifths of the delivery period, this difference being expressed as a percentage of the former index figure.
  - 9.4 The Company further reserves the right to increase the price of the Products or Services by giving notice to the Purchaser, to reflect any increase in the cost to the Company of performing the Contract that is due to:
    - 9.4.1 interruptions, delays, increases in taxes and duties, increases in labour, materials and other manufacturing costs and foreign exchange fluctuations, or any factor beyond the control of the Company;
    - 9.4.2 any request by the Purchaser to change the delivery date(s), quantities or types of Products or Services or the respective Specifications; or
    - 9.4.3 any delay caused by any instructions of the Purchaser in respect of the Products or Services, or failure of the Purchaser to give the Company adequate or accurate information or instructions in respect of the Products or Services.
  - 9.5 Time for payment shall be of the essence of the Contract.
  - 9.6 All amounts payable by the Purchaser under the Contract are exclusive of amounts in respect of value added tax (or similar sales tax imposed in another jurisdiction) chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Purchaser, the Purchaser shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services or Products at the same time as payment is due for the supply of the Services or Products.
  - 9.7 Where the Purchaser's main place of business is outside the UK, payment shall (unless otherwise agreed in writing by the Company) be made by means of a confirmed and irrevocable Letter of Credit drawn on an approved UK bank to permit payments in accordance with and up to the total value of the Order. In the event that the final shipment has not been made before the expiry date of the covering Letter of Credit, the Purchaser will obtain extensions to the validity of such Letter of Credit in periods of three months.
  - 9.8 If the Purchaser fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under clause 16, the Purchaser shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
  - 9.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 10. INTELLECTUAL PROPERTY RIGHTS**
- 10.1 All Intellectual Property Rights in the Products and the Deliverables and in or arising out of or in connection with the Services shall be owned by the Company.
  - 10.2 The Company grants to the Purchaser, or shall procure the grant to the Purchaser of, a fully paid-up, worldwide, non-exclusive, royalty-free licence to copy the Deliverables solely for the purpose of receiving and using the Services and the Deliverables in its business, subject to clause 14.
  - 10.3 The Purchaser shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.
  - 10.4 The Purchaser grants the Company a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Purchaser to the Company for the term of the Contract for the purpose of providing the Products and the Services to the Purchaser.
  - 10.5 All Company Materials (and Intellectual Property Rights therein) are and shall remain the property of the Company or its contractors.
- 11. INDEMNITY**
- 11.1 The Purchaser shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Company arising out of or in connection with:
    - 11.1.1 any claim made against the Company by a third party for death, personal injury, damage to property or otherwise arising as result of any act or omission of the Purchaser or its agents, subcontractors or consultants (including in relation to unsuitable or unsafe plant or equipment provided by the Purchaser or such agents, subcontractors or consultants);
    - 11.1.2 any damage to the Company's property caused by an act or omission of the Purchaser or its agents, subcontractors or consultants; and
    - 11.1.3 any breach of the Contract by the Purchaser or its agents, subcontractors or consultants, or any act, omission, negligence or wilful misconduct on the part of the Purchaser or its agents, subcontractors or consultants.
  - 11.2 This clause 11 shall survive termination of the Contract.



## 12. INSURANCE

Where the Company is engaged to perform installation services, the Purchaser shall insure in the joint names of the Purchaser and the Company the whole and every part of the Products and the Company Materials including hired plant from the date of arrival at the Site to completion of the installation services at full replacement value against loss or damage from any cause whatsoever.

## 13. DATA PROTECTION

- 13.1 In this clause **controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures** shall have the meaning given in the Data Protection Legislation.
- 13.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. In this clause 13, **Applicable Laws** means (for so long as and to the extent that they apply to the Company) the law of the European Union, the law of any member state of the European Union and/or all Data Protection Legislation and any other law that applies in the UK.
- 13.3 The parties acknowledge that for the purposes of the Data Protection Legislation, to the extent that personal data is to be processed by the Company on behalf of the Purchaser, the Purchaser is the controller and the Company is the processor.
- 13.4 Without prejudice to the generality of clause 13.1, the Purchaser will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Company for the duration and purposes of the Contract.
- 13.5 Without prejudice to the generality of clause 13.1, the Company shall, in relation to any personal data processed in connection with the performance by the Company of its obligations under the Contract:
- 13.5.1 process that personal data only on the documented written instructions of the Purchaser unless the Company is required by Applicable Laws to otherwise process that personal data;
  - 13.5.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
  - 13.5.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
  - 13.5.4 not transfer any personal data outside of the European Economic Area unless the transfer is in accordance with the Data Protection Legislation;
  - 13.5.5 assist the Purchaser, at the Purchaser's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 13.5.6 notify the Purchaser without undue delay on becoming aware of a personal data breach;
  - 13.5.7 following the written direction of the Purchaser, delete or return personal data and copies thereof to the Purchaser on termination of the Contract unless required by Applicable Law to store the personal data; and
  - 13.5.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for audits by the Purchaser or the Purchaser's designated auditor on not less than 3 weeks prior written notice and during normal business hours.
- 13.6 The Purchaser consents to the Company appointing each of the Company's subcontractors as a third-party processor of personal data under the Contract. The Company confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 11. As between the Purchaser and the Company, the Company shall remain liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 11.

## 14. CONFIDENTIALITY

- 14.1 Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 14.2. The Company's confidential information shall include any information of a confidential or proprietary nature relating to the operations, premises, processes, product information, know-how, designs, specifications, formulae, drawings, samples, prototypes, devices, techniques, trade secrets or software of the Company or its suppliers.
- 14.2 Each party may disclose the other party's confidential information:
- 14.2.1 to its employees, officers or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract.

Each party shall ensure that its employees, officers or advisers to whom it discloses the other party's confidential information comply with this clause 14 and have signed written agreements containing confidentiality obligations no less onerous than those imposed under this clause; and

- 14.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority,

and the Company shall be entitled to disclose the Purchaser's confidential information to any subcontractors engaged to perform any part of the Contract.

- 14.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 15. LIMITATION OF LIABILITY

- 15.1 The restrictions on liability in this clause 15 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 15.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for death or personal injury caused by negligence or fraud or fraudulent misrepresentation.
- 15.3 Subject to clause 15.2, the Company's total liability to the Purchaser in respect of all breaches of duty occurring within any contract year shall not exceed an amount equal to the total charges actually paid by the Purchaser to the Company under the Contract (excluding for the avoidance of doubt any other contracts between the parties) in the contract year in which the breaches occurred. In this clause 'contract year' means a 12-month period commencing with the date on which the Contract was created or any anniversary of such date.
- 15.4 The following types of loss are wholly excluded: loss of profits; loss of sales or business; loss of anticipated savings; loss of use or corruption of software, data or information; loss of or damage to goodwill; and indirect or consequential loss.
- 15.5 The terms implied by sections 13 to 15 of the Sale of Products Act 1979 and sections 3, 4 and 5 of the Supply of Products and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 15.6 This clause 15 shall survive termination of the Contract.
- ## 16. TERMINATION
- 16.1 Without affecting any other right or remedy available to it, the Company may terminate the Contract by giving the Purchaser not less than 30 days' written notice.
- 16.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.
- 16.3 Without affecting any other right or remedy available to it, the Company may terminate the Contract with immediate effect by giving written notice to the Purchaser if:

- 16.3.1 the Purchaser fails to pay any amount due under the Contract on the due date for payment;
- 16.3.2 the Purchaser commits a breach of any of its other its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within a period of 2 days after the date of the breach;
- 16.3.3 there is a change of Control of the Purchaser; or
- 16.3.4 the Purchaser's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy, or the Purchaser suspends or threatens to suspend the carrying on of its business.

- 16.4 Without affecting any other right or remedy available to it, the Company may suspend the supply of Services or all further deliveries of Products under the Contract or any other contract between the Purchaser and the Company if the Purchaser fails to pay any amount due under the Contract on the due date for payment, the Purchaser takes or becomes subject to any of the actions or events listed in clause 16.2 or clause 16.3, or the Company reasonably believes that the Purchaser is about to become subject to any of them.

## 17. CONSEQUENCES OF TERMINATION

- 17.1 On termination of the Contract:

- 17.1.1 the Purchaser shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services and Products supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Purchaser immediately on receipt;

- 17.1.2 the Purchaser shall return all of the Company Materials and any Deliverables or Products which have not been fully paid for. If the Purchaser fails to do so, then the Company may enter the Purchaser's premises and take possession of them. Until they have been returned, the Purchaser shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 17.2 The Company shall be under no obligation to repay any advance sums paid by the Purchaser in the event of termination of the Contract by the Company pursuant to clause 16.2 or clause 16.3.
- 17.3 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 17.4 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.
18. **FORCE MAJEURE**
- 18.1 **Force Majeure Event** means any circumstance not within the Company's reasonable control including, without limitation acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts; non-performance by suppliers or subcontractors; and interruption or failure of utility service.
- 18.2 The Company shall not be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 months, either party may terminate the Contract by giving 14 days' written notice to the affected party.
19. **GENERAL**
- 19.1 **Assignment and other dealings** The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Purchaser shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Company.
- 19.2 **Notices.**
- 19.3 Any notice given to a party under or in connection with the Contract shall be in writing and shall be (a) delivered by hand or by pre-paid first-class post or other next working day delivery service or airmail at its registered office; or (b) sent by email to the address notified for such purposes. Any notice shall be deemed to have been received:
- 19.3.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 19.3.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;
- 19.3.3 if sent by airmail, at 9.00 am on the fifth Business Day after posting or at the time recorded by the delivery service; and
- 19.3.4 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 19.3.4, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 19.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 19.4 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 19.5 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 19.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 19.7 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- 19.8 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract
- 19.9 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 19.10 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 19.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- SCHEDULE – OVERSEAS INSTALLATION**
- (a) **Income Tax**  
Local Income Tax, if payable, will be paid by the Purchaser together with any other local taxes.
- (b) **Travelling Expenses**  
The Purchaser will pay travelling expenses for the Installation Engineers from place of residence to the place of installation, and also the return travelling expense at the end of the project. These expenses comprise the cost of economy class air tickets and first class rail tickets, together with a quoted amount of out of pocket expenses per journey to cover other incidental expenses.
- (c) **Accommodation**  
The Purchaser will provide the Installation Engineers with hotel accommodation of European standard at no charge with facilities comprising full board and lodging with at least one single room with bath or shower for each person. If the Installation Engineers are required to be away from the United Kingdom for a period exceeding twelve months, the Purchaser will provide married accommodation of a high standard free of charge, at the request of the Company.
- (d) **Transport**  
The Purchaser will provide, free of charge, including all running expenses, a motor car for use by the Installation Engineers for transport to and from place of work and to and from the nearest recreation centre.
- (e) **Medical Expenses**  
The Purchaser will provide free medical attention for the Installation Engineers in the event of accident or sickness, including dental attention, medicines and hospital treatment and shall on demand produce to the Company evidence of such medical and other insurance cover as is reasonably required to provide such attention.
- (f) **Leave**  
The Installation Engineers are entitled to any statutory National Holidays observed by the Country in which the work is being carried out. If work is continued on any such days, payment will be due at the appropriate overtime rates. Should the Installation Engineers be away from the UK for six months or more, they will be entitled to two days home leave for each month away. The Purchaser will pay travelling expenses incurred in such leave, as stated in Sub Clause (b) hereof.
- (g) **Work Permits**  
If required are to be provided by the Purchaser.
- (h) **Progress Sheets**  
The Company will provide its employees with Outwork Progress and Time sheets to be submitted to the Purchaser's representative on a weekly basis. The Purchaser's representative shall check and sign these work progress sheets and all work progress sheets signed as correct by or on behalf of the Purchaser shall be conclusive of the correctness of their contents. Should any dispute arise as to the correctness of any work progress sheet prior to signing by the Purchaser's Representative the matter is to be referred to the Company's Senior Supervisor and the Purchaser's Chief Engineer responsible for the work and if the dispute is not resolved within 7 days the Company must be informed by the Purchaser by telex or cable addressed to the Company's registered office in the United Kingdom. Failure of the Purchaser's representative to sign a work progress sheet on a point not affecting the safe operation of the machinery shall not constitute sufficient reason for withholding release of completion certificates or delaying payments properly due to the Company.