

**TERMS AND CONDITIONS OF PURCHASE**  
**OF EPC UNITED KINGDOM LIMITED AND ITS SUBSIDIARIES**

These standard Terms and Conditions of Purchase apply to all purchases of goods, materials, components, software (as product or service) (hereinafter jointly referred to as “Product(s)”) as well as works and services (hereinafter jointly referred to as “Service(s)”) sourced from any supplier / subcontractor, by EPC United Kingdom Limited (the “Buyer”) pursuant to a Purchase Order (as defined below) entered into with such supplier / subcontractor (the “Supplier”).

**1. TERMS AND CONDITIONS – ACCEPTANCE – MODIFICATION**

- 1.1 These Terms and Conditions constitute the complete, exclusive and fully integrated statement of terms and conditions between the Supplier and the Buyer with regard to the purchase of Products and/or Services from the Supplier. No terms or conditions other than those stated herein, and no agreement or understanding, oral or written, in any way purporting to modify these Terms and Conditions shall be binding on the Buyer unless expressly agreed upon in writing by an authorised representative of the Buyer.
- 1.2 The Buyer will not be liable for any order of Product(s) and/or Service(s) unless such order is issued on Buyer’s own purchase order form or such other form as may be agreed in writing by an authorised representative of Buyer (each a “Purchase Order”).
- 1.3 The issuance of a Purchase Order constitutes an offer by the Buyer to purchase Products and/or Services from the Supplier in accordance with these Terms and Conditions.
- 1.4 The Purchase Order may be issued by the Buyer by mail, by fax, by email or any other electronic means agreed upon. The Contract shall come into existence upon the earlier of (a) the Supplier issuing written acceptance of the Purchase Order; and (b) the performance of any act by the Supplier consistent with fulfilling the Purchase Order.
- 1.5 If, within 10 business days from the date of the Purchase Order, the Supplier has failed to take any action consistent with fulfilling the Purchase Order, or has failed to issue written acceptance of the Purchase Order or where such written acceptance contains changes which are unacceptable to the Buyer, the Buyer reserves the right to cancel the Purchase Order with no costs payable to the Supplier.
- 1.6 A Contract may consist of several documents including any one or more of the following documents:
  - 1.6.1 the Purchase Order setting out the particulars of the order including details of the Products and/or Services to be purchased, price, payment, duration of the Contract, delivery date and any special conditions which apply to the Contract, if any;
  - 1.6.2 the technical specifications for the Products and/or Services approved by the Buyer;

- 1.6.3 any other document listed in the Purchase Order and stipulated by the Buyer as a part of the Contract.
- 1.7 These Terms and Conditions shall apply to all Contracts to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.8 All of these Terms and Conditions shall apply to the supply of both Products and Services from the Supplier except where the application to one or the other is specified.
- 1.9 In the event of any conflict or discrepancy between the provisions of one or several documents contained within the Contract the order of precedence set out in clause 1.6 shall prevail in the order in which they are listed.
- 1.10 Unless specified otherwise in the Purchase Order, the price set forth in the Purchase Order is firm and is not subject to change or adjustment without the prior written approval of an authorised representative of the Buyer. The Supplier may not cancel a Contract once it has accepted the Purchase Order without the Buyer's agreement in writing.
- 1.11 For the avoidance of doubt there shall be no minimum purchase obligations on the Buyer in respect of any of the Products and/or Services it purchases from the Supplier pursuant to these Terms and Conditions.
- 2. SUPPLY OF PRODUCTS AND WARRANTIES**
- 2.1 The Supplier warrants that all Products sold to the Buyer carry the appropriate CE certification and conform to the health, safety and environmental protection standards required by such certification, including in relation to any shelf-life or life-guarantee specified in respect of such Products. For the avoidance of doubt, where the Purchase Order specifies a minimum shelf-life for the Products, the Seller shall ensure that the Products are delivered to the Buyer with such shelf-life remaining at the time of delivery.
- 2.2 The Supplier warrants that all Products sold to the Buyer shall:
- 2.2.1 be free and clear of all liens and encumbrances;
  - 2.2.2 correspond to their description and any applicable technical or other specification;
  - 2.2.3 be new, of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Buyer, expressly or by implication, and in this respect the Buyer relies on the Supplier's skill and judgment;
  - 2.2.4 be free from defects in design, materials and workmanship and remain so for 12 months after delivery or for the prescribed shelf-life of the Products; and
  - 2.2.5 comply with all applicable statutory and regulatory requirements relating to: the manufacture, labelling, packaging, storage, handling and delivery of the Products and for such use(s) as the Buyer has made known to the Supplier and/or for which the Supplier holds the Products out.

- 2.3 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits it needs to carry out its obligations under the Contract in respect of the Products.
- 2.4 Without prejudice to any other right or remedy it may have, the Buyer shall have the right to return all defective and non-conforming Products to the Supplier at the Supplier's expense for repair, replacement or refund at the Buyer's option. The Supplier warrants such repaired or replacement items to the same extent that all Product(s) are warranted under these Terms and Conditions of Purchase.
- 2.5 The warranties set out in clauses 2.1 and 2.2 are assignable by the Buyer and shall inure to the benefit of the Buyer and the Buyer's successors, assigns and customers. Any and all attempts by the Supplier to limit, disclaim or otherwise restrict any of the warranties provided for herein are hereby rejected by the Buyer and shall be null, void and ineffective without the written approval of an authorised representative of the Buyer.
- 3. DELIVERY OF PRODUCTS - TIME SCHEDULE – DELIVERY DATE(S)**
- 3.1 The Supplier shall ensure that:
- 3.1.1 the Products are properly packed and secured in such a manner to enable them to reach their destination in good and useable condition;
  - 3.1.2 each delivery of the Products is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Products, special storage instructions, if any and, if the Products are being delivered by instalments, the outstanding balance of Products remaining to be delivered.
- 3.2 The Supplier shall deliver the Products:
- 3.2.1 on the date specified on the Purchase Order;
  - 3.2.2 to the location set out in the Purchase Order, or as instructed by the Buyer before delivery (the "Delivery Location");
  - 3.2.3 during the Buyer's normal hours of business, or as instructed by the Buyer.
- 3.3 Time is of the essence with respect to shipment and delivery of Product(s) and/or performance of the Services by the date(s) set forth in the Purchase Order. The Supplier undertakes to deliver all Product(s) and perform its Services strictly in accordance with the time schedule and place of delivery specified in each Purchase Order. When the Supplier anticipates a delay in the delivery date(s) or time of performance, the Supplier shall provide written notification to the Buyer of the anticipated delay and the reasons therefor with full detail. The Buyer may at its sole discretion, agree to a variation to the time schedule for delivery, otherwise, without prejudice to the other rights and remedies available to it, the Buyer may terminate the Contract in accordance with clause 9.
- 3.4 If the Supplier:
- 3.4.1 delivers less than 95% of the quantity or volume of Products ordered; or
  - 3.4.2 delivers more than 105% of the quantity of Products ordered,

the Buyer may at its sole discretion reject the Products or the excess Products, and any rejected Products shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Products ordered, and the Buyer accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Products.

3.5 The Supplier shall not deliver the Products in instalments without the Buyer's written consent. Where it is agreed that the Products are delivered in instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Buyer to the remedies set out in clause 9.

#### **4. DELIVERY - RISK OF LOSS – ACCEPTANCE**

4.1 Delivery of the Products shall be made:

4.1.1 at the Delivery Location specified in the Purchase Order or as otherwise notified to the Supplier by the Buyer; and

4.1.2 in accordance with delivery terms specified in the Purchase Order. Any applicable Incoterm shall be identified in the Purchase Order, if none is specified DDP Incoterms 2020 shall apply.

4.2 Risk in the Products shall pass as agreed in the Purchase Order, or where applicable as prescribed by relevant Incoterm specified in the Purchase Order. If passing of risk is not specified in the Purchase Order, risk shall only pass upon completion of unloading at the Delivery Location.

4.3 Title in the Products shall pass upon completion of their delivery at the Delivery Location.

#### **5. PERFORMANCE OF SERVICES - STANDARD OF CONDUCT**

5.1 The Supplier shall, from the date set out in the Purchase Order and for the duration of the Contract supply the Services to the Buyer in accordance with the terms of the Contract.

5.2 The Supplier shall meet any performance dates for the Services specified in the Purchase Order or that the Buyer notifies to the Supplier and time is of the essence in relation to any of those performance dates.

5.3 In performing the Services, the Supplier shall:

5.3.1 cooperate with the Buyer in all matters relating to the Services and comply with all instructions of the Buyer;

5.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

5.3.3 ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract;

5.3.4 provide all equipment, tools and vehicles and such other items as are required to provide the Services;

- 5.3.5 use the best quality goods, materials, standards and techniques, and ensure that any deliverables, and all goods and materials supplied and used in the Services or transferred to the Buyer will be free from defects in workmanship, installation and design;
- 5.3.6 hold all materials, equipment and tools, drawings, specifications and data supplied by the Buyer to the Supplier (“Customer Materials”) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Buyer, and not dispose or use the Customer Materials other than in accordance with the Buyer’s written instruction or authorisation; and
- 5.3.7 not do or omit to do anything which may cause the Buyer to lose any licence, authority, consent or permission upon which it relies for the purpose of conducting its business, and the Supplier acknowledges that the Buyer may rely or act on the Services.
- 5.4 The Supplier represents and warrants that it and each of its personnel (including its sub-suppliers) is qualified and has the capacity, experience, resources, skill and expertise to supply the Product(s) and Service(s) in accordance with the requirements of the Contract.
- 5.5 To the extent that the performance of the Supplier’s obligations under the Contract requires the Supplier’s personnel to be on a site nominated by the Buyer (“Site”), the Supplier must ensure that its personnel act, at all times, in a workmanlike, careful, safe and proper manner in accordance with all applicable laws and regulations (including in relation to health and safety, industrial relations and environmental matters). The Supplier shall defend, indemnify and hold harmless the Buyer from and against any and all claims, costs, demands, expenses and losses (including any direct or indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, costs and legal costs (calculated on a full indemnity basis)) arising out of or in connection with any failure of the Supplier’s personnel to abide by all applicable laws and regulations and act in a workmanlike, careful, safe and proper manner on Site.
- 5.6 For work on a Site, the Supplier will actively participate in setting up an accident prevention plan and will take all necessary precautions and measures accordingly to ensure safety on Site as required so as to prevent accidents to the fullest extent possible.
- 6. INVOICING AND TERMS OF PAYMENT**
- 6.1 The total price specified in a Purchase Order will include any and all packaging, and subject to any Incoterm agreed in respect of delivery, include all freight, transportation, duty, withholding taxes and tax, with the exception of any value-added tax (“VAT”) imposed on the transaction which, if applicable, must be identified and listed separately on the Supplier’s quote and invoice. No extra charges shall be effective unless agreed in writing and signed by the Buyer.
- 6.2 The charges for the Service(s) shall be set out in the Purchase Order and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Buyer, the charges set out in the Purchase Order shall include every cost and expense of the Supplier directly incurred in connection with the performance of the Services.

- 6.3 The Supplier may invoice the Buyer for the price of the Product(s) as set out in the Purchase Order on or at any time after the completion of delivery and acceptance of the Products by the Buyer. There shall be no price increase in respect of the Products without the express agreement of the Buyer. In respect of the Services, the Supplier shall invoice the Buyer on completion of the Services, or at intervals agreed between the parties and set out in the Purchase Order.
- 6.4 The Supplier's invoices will be payable in accordance with the terms agreed with the Supplier in relation to the payment of their invoices and as set out in the Purchase Order. If the Purchase Order is silent on time for payment of invoices, valid invoices shall be due for payment sixty (60) days after receipt by the Buyer. In the event that delivery terms agreed with the Supplier mean that shipment and/or transportation costs are payable by the Buyer under separate invoice, such invoices shall be paid by Buyer within thirty (30) days from the date of the Buyer's receipt of the Supplier's invoice.
- 6.5 All invoices must include, in addition to any information required by any applicable taxing authority or under any applicable tax law or regulation, the reference and identification numbers of the relevant Purchase Order, the invoice number, the applicable Incoterm, and any supporting documents that the Buyer may require to verify the accuracy of the invoice.
- 6.6 Unless a Purchase Order specifically states otherwise, all payments shall be made in GBP (pounds sterling) or, in the case of Service(s), in the local currency of Buyer's location where the Service(s) are rendered.
- 6.7 In addition to any right of set-off provided by law, the Buyer shall be entitled to, at all times and without notice to the Supplier, set off any amount owing at any time from the Supplier to the Buyer against any amount payable to the Supplier by the Buyer and whether or not such amount owing arises under this Contract. Any exercise by the Buyer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
- 6.8 Other than in respect of any amounts disputed in good faith, if either party fails to make a payment due to the other party under this Contract by the due date, then the defaulting party 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. The remedy set out in this clause 6.8 shall be the Supplier's sole remedy for the Buyer's breach of its obligations under the Contract.

## **7. INDEMNITY – INSURANCE**

- 7.1 The Supplier agrees to defend, indemnify and hold harmless the Buyer from and against all claims, losses, expenses and damages (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, demands, penalties, costs and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Buyer arising out of or in connection with:

- 7.1.1 any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of, or in connection with, any fault or defects in the Products; or

- 7.1.2 any claim made against the Buyer by a third party arising out of or in connection with the supply of the Products or the Services, or their use and enjoyment (provided the same is in accordance with the terms of this Contract).
- 7.2 For the duration of this Contract and for 3 years thereafter, Supplier shall take out and maintain (with insurers of international standing) professional indemnity insurance, product liability insurance, employer's liability insurance and public liability insurance in such amount as is sufficient to cover the liabilities that may arise under or in connection with the Contract and in any event no less than would be maintained by a reasonably prudent man in the Supplier's position. Where additional specific insurance requirements must be met by the Supplier, such requirements shall be set out in the Purchase Order.
- 7.3 The Supplier must furnish to the Buyer, promptly upon the Supplier's acceptance of a Purchase Order and, in any event, prior to payment, certificates of insurance evidencing that the requisite insurance is in effect and it shall notify the Buyer within thirty (30) days prior to cancellation or material change of any such insurance.
- 7.4 The Supplier must notify the Buyer immediately if it is required to undertake a product recall. The Buyer shall at the Supplier's cost, give such assistance as the Supplier requires for the purpose of recalling as a matter of urgency any quantities of the Product. In addition, the Supplier shall defend, indemnify and hold harmless the Buyer against any costs, claims, demands, losses, costs and expenses arising out of or in connection with any recall of the Products, including all legal costs (calculated on a full indemnity basis)).
- 7.5 This clause 7 shall survive the termination of the Contract.
- 8. LIMITATION OF LIABILITY AND DAMAGES**
- 8.1 Nothing in this Contract:
- 8.1.1 shall limit or exclude either party's liability for:
- 8.1.1.1 death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
- 8.1.1.2 fraud or fraudulent misrepresentation;
- 8.1.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- 8.1.1.4 any other liability which cannot be limited or excluded by applicable law; or
- 8.1.2 shall limit or exclude the Supplier's liability under clause 5.5, clause 7.1, clause 7.4, clause 12.4 and clause 14.2.
- 8.2 The losses for which the Supplier assumes responsibility and which shall be recoverable by the Buyer include:
- 8.2.1 sums paid by the Buyer to the Supplier pursuant to this Contract, in respect of any services not provided in accordance with the terms of this Contract;
- 8.2.2 wasted expenditure;



- 8.2.3 additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
  - 8.2.4 loss of reputation;
  - 8.2.5 damage to goodwill;
  - 8.2.6 loss of opportunity;
  - 8.2.7 losses incurred by the Buyer arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any subcontractor, Supplier personnel, regulator or customer of the Buyer) against the Buyer caused by the act or omission of the Supplier;
  - 8.2.8 anticipated savings.
- 8.3 The rights of the Buyer under this Contract are in addition to, and not exclusive of, any rights or remedies provided by the common law.
- 9. SUSPENSION – CANCELLATION – TERMINATION**
- 9.1 The Buyer shall, at any time, be entitled to, by written notice to the Supplier, suspend the performance of the Contract or terminate the Contract in whole or in part for its convenience. In such case, the Buyer, at its option, shall pay the Supplier: (i) fair and reasonable compensation for the standby costs arising directly from any suspension; (ii) for those Product(s) and Service(s) actually delivered and/or performed and accepted (as the case may be) by the Buyer at the date of suspension or termination; and (iii) costs incurred by the Supplier for unfinished Product(s) which are specifically manufactured for the Buyer and which are not standard products of the Supplier (unless the Supplier is able to sell such Products to a third party). In no event shall the Buyer be liable for any loss of anticipated profit, any indirect, incidental or consequential loss, costs and expenses which may arise from such suspension or termination.
- 9.2 The Buyer reserves the right to suspend payment(s) and terminate, in whole or in part, any or all Contracts with the Supplier with immediate effect upon notice in writing to Supplier if the Supplier:
- 9.2.1 fails to perform or observe any of its contractual obligations under this Contract, provided that the Supplier fails to remedy, partially or totally, such breach within eight (8) days of receipt of the Buyer's notification requiring it to do so;
  - 9.2.2 refuses or fails to deliver the Product(s) or Service(s) within the time specified in the Purchase Order;
  - 9.2.3 fails to comply with any of the provisions of the Contract or fails to make progress so as to endanger performance of its obligations under the Contract;
  - 9.2.4 undergoes a change to its financial position which means it deteriorates to such an extent that in the Buyer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
  - 9.2.5 undergoes a change of control; or



- 9.2.6 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 solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of 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.
- 9.3 Upon the occurrence of any of the events set out in clause 9.2, the Buyer may perform or cause to be performed by others at the Supplier's risk and cost any remedial work required to carry out and complete the Contract. The Buyer shall be entitled to recover from the Supplier any or all payments already made to the Supplier until the date of termination together with any and all costs, expenses, losses or damages incurred, sustained or suffered by the Buyer as a result of the Supplier's default as a debt due and payable by Supplier.
- 9.4 The Buyer may terminate in whole or in part, the Contract, at any time for its convenience. The Buyer's sole obligation, in such case, shall be to pay the Supplier for: (i) those Product(s) and Service(s) actually delivered and/or performed and accepted (as the case may be) by the Buyer at the date of termination, and (ii) costs incurred by the Supplier for unfinished Product(s) which are specifically manufactured for the Buyer and which are not standard products of the Supplier. In no event, shall the Buyer be liable for loss of anticipated profit nor shall payments to be made by the Buyer exceed the price of the Products and/or Services set out in the Purchase Order.
- 9.5 In the event of termination, for any reason whatsoever, the Supplier agrees and undertakes to provide and make available to the Buyer all data, studies, drawings, calculation notes, document, materials (including the Customer Materials), equipment, temporary facilities and services to the extent required for the Buyer and/or for any substitute third party supplier to carry out and complete the Contract.
- 9.6 Termination of the Contract shall not affect the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.7 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## 10. FORCE MAJEURE

- 10.1 Force Majeure Event means any circumstance not within a party's reasonable control which materially and adversely impacts on the affected party's ability to comply with this Contract as follows:
- 10.1.1 acts of God, flood, drought, earthquake or other natural disaster;
  - 10.1.2 declared pandemic;
  - 10.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, or embargo;
  - 10.1.4 nuclear, chemical or biological contamination;
  - 10.1.5 collapse of buildings, fire, explosion or accident.

Save to the extent the foregoing has been caused by, contributed to or there has been a failure to mitigate against the Force Majeure Event by the affected party.

- 10.2 Provided it has complied with clause 10.3, if a party is prevented from performing any of its obligations under the Contract by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended for the minimum amount of time reasonably necessary for performance to be reinstated.
- 10.3 The Affected Party shall:
- 10.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 3 working days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
- 10.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 10.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 15 calendar days, the party not affected by the Force Majeure Event may terminate this Contract with immediate effect by written notice to the Affected Party.

## **11. CONFIDENTIAL INFORMATION**

- 11.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information (defined at clause 11.5 below) of the other party, except as permitted by clause 11.2.
- 11.2 Each party may disclose the other party's Confidential Information:
- 11.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this clause 11; and
- 11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract and each party shall return or destroy such confidential information promptly upon request or upon termination or expiry of the Contract.
- 11.4 The Contract is confidential between the Buyer and the Supplier and none of the detail in connection with the negotiation or the performance of the Contract, or relating to Buyer's business or its customers, shall be published through press articles or otherwise disclosed and the Supplier shall make no use whatsoever of Buyer's Intellectual Property Rights

(defined at clause 12.5 below), including logos, trade-names and trademarks, without the Buyer's prior written permission.

- 11.5 For the purposes of this clause **Confidential Information** means all confidential or proprietary information including that which relates to a party's (a) business affairs, customers, clients, suppliers, plans, intentions, or market opportunities (b) operations, processes, product information, know-how, technical information, designs, trade secrets or software (c) any information, findings, data or analysis derived from Confidential Information and (d) other information that is identified or should reasonably be understood as being of a confidential or proprietary nature.

## 12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 In consideration of the price payable by the Buyer for the Products and/or Services the Supplier hereby assigns to the Buyer absolutely all of its rights, title and interest in and to the following rights throughout the world (Rights):
- 12.1.1 any and all Intellectual Property Rights in any software, software documents, other documents, studies, drawings or technical data or products generated or produced by the Supplier specifically for the Buyer in connection with its performance of the Contract; and
- 12.1.2 all related rights and powers arising or accrued, including the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of the Rights, whether occurring before, on, or after the date of the Contract.
- 12.2 The Supplier will perform all actions necessary and execute or arrange for the doing and execution of, each necessary act, document and thing that the Buyer may consider necessary or desirable to perfect the assignment of Intellectual Property Rights granted pursuant to clause 12.1. Without prejudice to the foregoing, the Supplier further grants to the Buyer a royalty free, perpetual, worldwide licence to use the Supplier's Intellectual Property Rights arising in or relating to background, pre-existing and non-bespoke materials, deliverables and Products for use and enjoyment of the Services and Products as anticipated by the terms of this Contract.
- 12.3 To the extent necessary, the Buyer grants to the Supplier a royalty free, non-exclusive, revocable licence during the term of the Contract to use the Intellectual Property Rights assigned to it pursuant to clause 12.1 together with any relevant Customer Materials for the purpose of performing the Services and/or supplying the Products under the terms of the Contract.
- 12.4 The Supplier warrants that the delivery of Product(s) and/or performance of Service(s) shall not infringe any third-party Intellectual Property Rights. Accordingly, the Supplier shall defend, indemnify and hold harmless the Buyer from and against any and all claims, costs, damages, expenses and losses (including any direct or indirect consequential losses, loss of profit, loss of reputation and all interest, penalties, demands, account of profits and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) in connection with any suit, proceeding, or allegation, resulting from actual or alleged

infringement of any third party Intellectual Property Rights (unless the infringement results from the Buyer's design).

- 12.5 For the purposes of this clause 12, Intellectual Property Rights mean patents, utility models, rights to inventions, copyright and neighbouring and related rights, all other rights in the nature of copyright, trademarks 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, database rights, 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.

### **13. COMPLIANCE WITH LAWS AND REGULATIONS**

- 13.1 The Supplier, a professional in its field, is aware of the demands and requirements of the explosives industry intended for civil use, in particular in terms of quality, safety, reliability, cost and deadlines and all applicable laws and regulations in the field. Accordingly, the Supplier shall ensure that the Product(s) to be delivered and/or the Services to be rendered are in compliance with the explosives industry's standards and customary practices, as well as with all laws, regulations and standards in force concerning health, safety, environmental protection and employment laws in each of the countries where the Product(s) are manufactured and/or the Services performed.
- 13.2 In particular, the Supplier undertakes to take necessary measures to ensure compliance with the Modern Slavery Act 2015, the Bribery Act 2010 (and all replacement legislation) and shall ensure it complies fully with the Buyer's mandatory policies on those issues together with all other mandatory policies supplied by the Buyer to the Supplier (as are amended) from time to time.
- 13.3 It is the Supplier's duty to advise the Buyer with respect to the processing, handling or use of the Product(s) and keep Buyer fully informed of all applicable environmental safety standards, customary practices, hazardous risks and legal requirements relating thereto.

### **14. REACH**

- 14.1 The Supplier hereby warrants that it as well as any and all of its sub-suppliers furnishing chemicals used or to be used in connection with the Product(s) or Services complies with the Registration, Evaluation, Authorisation and Restriction of Chemicals ("EU-REACH") Regulation 1 (EU 1907/2006) and UK-REACH.
- 14.2 The Supplier warrants that all chemicals used in the manufacturing process of the Product(s) and/or incorporated in the Product(s) or Services which are required to be registered in accordance with REACH have been pre-registered and are, or will be, registered by the Supplier and/or by its own sub-suppliers to cover the use thereof intended by the Buyer. The Supplier shall comply with EU-REACH, UK-REACH and all other applicable regulations in manufacture, storage and supply of the Products and Services. Accordingly, the Supplier shall defend, indemnify and hold harmless the Buyer from and against any and all claims, costs, demands, expenses and losses (including any direct or indirect consequential losses, loss of profit, loss of reputation and all interest, penalties, costs and legal costs (calculated on a full

indemnity basis)) arising out of or in connection with any failure by the Supplier and/or its own sub-suppliers to appropriately register the Products in accordance with EU-REACH and UK-REACH, and for any breach of EU-REACH, UK-REACH and other applicable regulations resulting from the acts or omissions of the Supplier.

- 14.3 The Supplier will supply technical safety sheets, updated in accordance with EU-REACH, UK-REACH and the CLP Regulation (EU 1272/2008), at the time of delivery of the Product(s) and Services to Buyer.

## **15. DATA PROTECTION**

- 15.1 To the extent that Data Protection Legislation applies, the parties agree to comply with their obligations therein. If the Supplier processes any personal data on behalf of the Buyer, the Supplier shall agree and abide by appropriate written terms with the Buyer in accordance with Article 28 of the GDPR prior to carrying out such processing.
- 15.2 For the purposes of this clause 15, Data Protection Legislation means the UK GDPR, the Data Protection Act 2018 and, to the extent applicable, the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any other directly applicable EU regulation relating to data protection and privacy.

## **16. ASSIGNMENT AND SUBCONTRACTING**

- 16.1 The Buyer may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights under the Contract.
- 16.2 The Supplier shall not assign, transfer, 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 without the Buyer's prior written consent. If the Buyer consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

## **17. NOTICES**

- 17.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in the Purchase Order.
- 17.2 A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; 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; if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume.
- 17.3 In this clause, business hours mean 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 17.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**18. SEVERANCE**

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

**19. 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.

**20. 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.

**21. 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.

**22. VARIATION**

Except as set out in these Terms and Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

**23. 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.

**24. 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.

The Vienna Convention of 1980 on the International Sale of Goods shall not apply.

