

## PRYME GROUP – SALES STANDARD TERMS & CONDITIONS

(Rev. 0 – Nov. 2, 020)

### 1. Definitions

**“Affiliate”** means any legal entity which controls, is controlled by, or is under common control with, another legal entity, as defined by the Customer Act 2006.

**“Customer”** means the legal entity issuing the Purchase Order to Supplier and shall include their successors in title and permitted assigns.

**“Client”** means any third party with whom the Customer has a contractual obligation to provide work which includes the Work and/or is the end user of such Work.

**“Consequential Loss”** means any and all special, indirect, incidental or consequential losses and damages. As well as for any and all loss of use, loss of revenue, loss of production or product, loss of profits, loss of or interruption to business, facilities downtime, loss of use of property or wasted overheads sustained by the indemnifying party in connection with or arising out of this Contract, howsoever the same may arise, whether under Contract, tort (including negligence of any form such as sole, concurrent, joint, sole, active passive) gross negligence, willful misconduct, strict liability or otherwise.

**“Contract”** means the contract entered into between Customer and Supplier in accordance with Clause 3 below (as may be amended or updated from time to time by way of Variation).

**“Customs Duties”** means all existing or future duties, payments, fees, charges, levies, taxes, or contributions payable to or imposed by any authority as a result of import or export, whether permanent or temporary of any personnel, plant, procured items, goods, tools or equipment.

**“Standard Terms and Conditions”** means these Purchase Standard Terms and Conditions.

**“Goods”** means any and all goods being purchased by Customer from Supplier as part of the Work including all components and materials to be incorporated therein or ancillary thereto and all articles, materials, supplies, drawings, data, documentation specified or required and carried out with respect to the Contract.

**“Equipment”** means an engineered system designed and built by Supplier for Customer as part of the Work including all components and materials to be incorporated therein or ancillary thereto and all articles, materials, supplies, drawings, data, documentation specified or required and carried out with respect to the Contract.

**“Intellectual Property”** means any invention, patent or application for a patent, design (registered or unregistered), trademark (registered or unregistered), name, copyright, circuit layout, design drawing and other technical information (including software), trade secret, know-how, proprietary information or other right in respect of any information, process, work, material or method.

**“Party”** means each of the Customer and Supplier as appropriate, and **“Parties”** means both the Customer and Supplier.

**“Proposal”** means any proposal, quotation, tender or similar documentation issued by Supplier to Customer in contemplation of or forming part of the performance of the Work.

**"Purchase Order"** means the body of any purchase Order, service Purchase Order, contract note, form of agreement, letter, work release or other similar document instructing or outlining the Work which incorporate these General Terms and Conditions by reference thereto.

**"Sales Order Confirmation"** means any confirmation issued by the Supplier to signal acceptance of the Purchase Order and that might include proposed variations to Customer.

**"Sales Tax"** means any transfer tax, gross receipts tax, compensating use tax, use taxes, sales tax, value added tax, goods and services taxes, business tax, consumption tax or other similar transactional taxes arising or payable as a result of the performance of the Work.

**"Supplier"** means the entity named on the Purchase Order as performing the Work.

**"Services"** means any and all services to be performed by Supplier for Customer as part or forming the whole of the Work.

**"Special Condition"** means any agreed amendment(s) to these General Terms and Conditions as set out in a Purchase Order or subsequent Variation.

**"Sub-Contractor"** means any party (other than Supplier) to a sub-contract entered into by Supplier for the performance of any part of the Work in accordance with Clause 7.2

**"Variation"** means an instruction or direction from Customer or any other circumstance or event which results in an increase, decrease or change to the scope, schedule, specification, design, nature, extent, delivery, quantities or quality of the Work or any change in law, rule or regulation and/or safety requirements which have a direct impact on the Work.

**"Work"** means all work, including the provision of Equipment, Goods, Services, which the Supplier is required to perform for Customer under the Contract including manufacture, modification, delivery, installation, testing and commissioning as required by Customer.

## **2. General**

- 2.1 All documentation relating to the Contract shall be in the English language.
- 2.2 All instructions, notices, agreements, authorisations, approvals, and acknowledgements relating to the Contract shall be in writing.
- 2.3 Unless the context otherwise requires, words importing the singular shall include the plural and vice versa.
- 2.4 Any reference to a statute, statutory instrument or statutory provision shall include any re-enactment or amendment thereof for the time being in force.
- 2.5 The words "include(s)" or "including" are to be construed without limitation.
- 2.6 Any headings used in these Standard Terms and Conditions are for convenience and shall not be used for the purposes of construction or interpretation.
- 2.7 An obligation of any Party to indemnify any person against a liability is to be construed as including an obligation to indemnify and hold harmless and keep that person indemnified on demand and in full from and against each liability incurred as a result of suffering, defending and settling a claim alleging that liability.
- 2.8 An obligation on the Customer or Supplier to do, or refrain from doing, any act or thing shall include an obligation on the Customer or the Supplier to procure that its personnel (and those of its sub-contractors, to the extent they are engaged in the supply of the Work) also do, or refrain from doing, such act or thing and the Customer or Supplier shall be liable for all acts and omissions of its personnel and its sub-contractors as if they were its own acts or omissions.

## **3. Basis of Contract**

- 3.1 The Supplier's Proposal is not to be construed as an offer or obligation to sell but merely an invitation to treat. The Supplier reserves the right to accept or reject any Purchase Orders received. The Customer's written Purchase Order

for the Work and the written acceptance by the Supplier of the Purchase Order will form a contract for the supply of the Work ordered.

- 3.2 These Sales Standard Terms and Conditions are the only terms and conditions upon which the Supplier is prepared to deal with the Customer and apply to the exclusion of any other terms or conditions that the Customer seeks to impose or incorporate, or which are implied by trade custom, practice or course of dealing. No other terms and conditions endorsed upon, delivered with or contained in the Customer's Purchase Order or pursuant acknowledgement of the Supplier's Sales order confirmation or in the specifications or similar documents, will form part of the Contract and the Customer waives any right it otherwise might have to rely on such terms and conditions.
- 3.3 Each Purchase Order constitutes an offer by the Customer to purchase the Work in accordance with these Standard Terms and Conditions and the specifications as detailed in the Purchase Order and constitute a separate contract between the Customer and the Supplier.
- 3.4 Customer is not entitled to any priority of supply over other customers of Supplier.
- 3.1 The Purchase Order shall be deemed to be accepted on the Supplier issuing a written acceptance of the Purchase Order or on commencing the Work.
- 3.2 Any variation to these Standard Terms and Condition shall be inapplicable unless agreed in writing by both parties.
- 3.3 The Purchase Order shall not be modified by or interpreted by reference to any course of dealing or usage of trade and shall not be modified by any course of performance. No modification of the Purchase Order shall be effective unless in writing and signed by an authorized representative of both Customer and Supplier.
- 3.4 The Contract Effective Date is the date at which the Purchase Order is accepted. The Purchase Order shall be deemed to be accepted on the Supplier issuing written acceptance of the Purchase Order.
- 3.5 Subject to other termination conditions, Contract and Purchase Order will automatically terminate on completion of the Work.

#### **4. Proposal Validity**

- 4.1 Any Proposal issued by Supplier is valid for 30 days. A Proposal provides estimates only and does not constitute an offer to sell by Supplier capable of acceptance by Customer.
- 4.2 Supplier has and retains title in and to any and all documentation issued as part of a Proposal and is entitled, at any time prior to written acceptance of the Proposal by Customer, to withdraw, reissue and/or request the immediate return of said documentation.

#### **5. Documents Order of Precedence**

In the event of any ambiguity or contradiction between any documents issued or forming part of the Contract, they shall be given priority in the following Purchase Order:

- (i) Sales Order confirmation
- (ii) These Sales Standard Terms and Conditions
- (iii) The Purchase Order
- (iv) Supplier's proposals, schedules, appendices, and other documentation issued in accordance with and forming part of the Contract, the later in time taking precedence over the earlier

#### **6. Customer's responsibilities**

- 6.1 The Customer shall provide the Supplier, in timely fashion, with all information required to carry out the Work. Should Customer delays delivery of such information, affecting the delivery date and/or price of the Work, then in such case, Supplier shall have the right to revise the delivery date and price of the Work and adjust accordingly.
- 6.2 Customer shall be responsible for ensuring the accuracy of information included in any request for a quote and any Purchase Order. Supplier relies on this information to fulfil its obligations under the contract.
- 6.3 Consequently, Supplier shall not be liable to the Customer for any penalties, liquidated damages, damages or indemnities resulting from the failure to comply with its obligations under the Contract due to delays in providing information or inaccurate information provided by Customer.

#### **7. Compliance with Customer's specification**

- 6.4 All Work shall conform to the quantity, quality and description specified in the Contract.

- 6.5 The Supplier shall carry out all of its obligations under the Contract and shall execute the Work with all due care and diligence and with the skill to be expected of a reputable supplier experienced in the types of work to be carried out under the Contract.
- 6.6 Materials and equipment or parts thereof provided by the Supplier for which there is no detailed specification included in the Contract shall be new or, subject to Customer's approval, as new, of good quality and workmanship and fit for the intended purpose where a purpose is defined in the Contract or, where no such purpose is defined, fit for its ordinary purpose.

## **8. Delivery**

- 8.1. Supplier shall deliver the Work at such place(s) and time(s) as set out in the Contract.
- 8.2. Customer will be deemed to have accepted the Work with effect from the date of delivery to the delivery location.
- 8.3. Delivery dates given by Supplier are deemed to be estimates only and may be subject to change.
- 8.4. Unless otherwise indicated in the Contract or the Purchase order, any Goods supplied as part of the Work shall be:
- (i) Delivered Ex-Works (as defined in INCOTERMS 2010) at the Supplier's premises on the delivery date(s) as indicated in the Contract; and
  - (ii) Marked with reference to any applicable Purchase Order or Contract number and other relevant data requested by Customer; and
  - (iii) Packed and secured in accordance with the specifications of the Contract
  - (iv) Where the Work consists of several Goods, each part shall be marked and identified as aforesaid, also showing the total number of parts being supplied as part of the Work.
- 8.5. Notwithstanding anything to the contrary, Supplier shall have no liability whatsoever to Customer for any delay in performing and/or completing the Work, and Customer shall have no right to damages, special, liquidated or otherwise, arising directly or indirectly from such delay, whether under the contract, or in tort, at law or otherwise.
- 8.6. If the Sales Order Confirmation specifies the payment terms as pro-forma invoice, Customer acknowledges that Supplier is not required to start the Work to Customer unless Customer has paid the invoice for the Work in full and Supplier is not liable to Customer for any failure to deliver the Work within the required period or that required date, resulting from Customer's failure to pay the invoice for the Work when due.
- 8.7. Supplier may cancel or suspend delivery of the Work to Customer if:
- (i) there are any outstanding invoices under this Contract; or
  - (ii) Supplier reasonably believes that the ordered Goods:
    - (i) may cause injury or damage; or
    - (ii) may infringe the Intellectual Property of a third party, but cancellation or suspension of delivery will not in any way constitute admission of liability or fault by Supplier.
- 8.8. If Supplier fails to deliver some or all the Work pursuant to the Contract, Customer shall not be entitled to cancel the Contract or the Purchase Order without the consent of the Supplier.
- 8.9. If Customer does not, or indicates to Supplier that it will not, take or accept delivery of any of the Goods, then these Goods shall be deemed to have been delivered when Supplier was required to deliver as per the Purchase order. Consequently, Supplier may arrange suitable storage of the Goods at Supplier's premises or elsewhere and all costs of such storage, insurance, handling, and other charges incidental to such storage will be charged to Customer.
- 8.10. Unless expressly precluded by the Sales Order Confirmation, Supplier reserves the right to deliver the Goods by instalments. Each instalment will be deemed to be the subject of a separate contract and no default or failure by Supplier in respect of any one or more instalments will vitiate the Contract in respect of the Goods previously delivered or undelivered. In the event that Supplier gives notice to Customer that it is unable to deliver any instalment of the Goods, Customer will be deemed to have accepted those instalments already delivered but Supplier may reimburse the Price of the undelivered Goods which have been paid for by Customer.
- 8.11. Supplier shall not be liable for shortage of Goods on delivery unless Customer notifies Supplier of the shortfall at the time of delivery at the delivery location and confirms the notification to Supplier in writing within seven days.
- 8.12. Supplier shall not be responsible for any damage to the Work which occurs at any time after delivery to Customer unless Customer can provide reasonable evidence that the damage was a direct result of any fault or defect:

- (a) in the manufacture of the ordered Goods and/or Equipment;
  - (b) in the packing of the ordered Goods and/or Equipment; or
  - (c) in the Work
- which Customer can show was caused prior to delivery to Customer

## **9. Installation and Use of Equipment**

- 9.1 Unless expressly included in the Sales Order Confirmation, Customer is responsible for installing the Equipment. Supplier excludes all liability for any damage to the Equipment arising during installation or attempted installation of such Equipment.
- 9.2 Use: The Equipment must only be used in accordance with the Specifications.

## **10. Inspection and Testing**

Customer and its representatives shall, upon giving reasonable notice and at their cost, be entitled to access any premises (including those of Subcontractors) to inspect and test the Work prior to acceptance or delivery, whichever is later.

## **11. Price and Payment**

- 11.1. Prices for the Work are specified in the Proposal issued by Supplier. Such prices are based on current costs (excluding VAT or local sales tax), and are subject to variation without notice if such costs increase either before or after acceptance of any order.
- 11.2. All prices quoted are exclusive of Sales Tax and, unless otherwise stated in the Contract, are deemed to be in Pounds Sterling (GBP).
- 11.3. Prices in the Proposal and Sales Order Confirmation, expressed in GBP, shall be fixed and firm for the validity period of the Proposal.
- 11.4. Within Thirty (30) days after receipt by Customer of Supplier's correctly prepared and adequately supported invoice to the address stated in the Contract, Customer shall effect payment of the invoice to a bank account nominated by Supplier.
- 11.5. If Customer disputes any item on an invoice, in whole or in part, or if the invoice is prepared or submitted incorrectly in any respect, Customer shall notify Supplier of the reasons and request Supplier to issue a credit note for the unaccepted part or whole of the invoice as applicable. Upon receipt of such credit note the Customer shall be obliged to pay the undisputed part of a disputed invoice.
- 11.6. If any dispute exists between the Parties, the Customer shall not have the right to withhold or off-set from any money which becomes payable under this Contract the amount which is subject of dispute.
- 11.7. On settlement of any dispute, the Supplier shall submit an invoice for sums due and the Customer shall make the appropriate payment in accordance with the provisions of Clause 11.4
- 11.8. Neither the presentation nor payment or non-payment of an individual invoice shall constitute a settlement of a dispute, an accord and satisfaction, a remedy of account state, or otherwise waive or affect the rights of the Parties hereunder.

## **12. Warranty**

- 12.1. Supplier warrants to Customer that the Work shall:
  - (i) Be performed by appropriately qualified and trained personnel, with due care and diligence; and
  - (ii) Be of sound workmanship, in accordance with the requirements set out in the Contract and the normal usage of such Work; and
  - (iii) Be free from defects in workmanship; and
  - (iv) Correspond with all specifications, drawings or samples if any referred to in the Contract
- 12.2. If the Work is not supplied or performed in accordance with the Contract, Customer shall immediately give notice to Supplier of such failure in writing and shall be entitled, within the below noted warranty periods, to request Supplier to promptly repair, replace or re-perform the Work in order to meet the requirements of the Contract.
- 12.3. The warranty periods for the Work are as follows:
  - (i) Goods: twelve (12) months from delivery in accordance with Clause 8
  - (ii) Equipment: twelve (12) months from delivery in accordance with Clause 8
  - (iii) Services: none
- 12.4. Subject to Clause 12.5 below, Supplier's liability in respect of this Clause 12 shall be limited to replacing, repairing or reperforming the defective Work. If corrective work must be carried out at a place other than the place where the Work was originally performed or Goods delivered at a place other than where originally delivered, all additional costs and expenses resulting therefrom shall be paid by the Customer.

- 12.5. Should Supplier fail or refuse to repair, replace or re-perform the Work in accordance with Clause 12.2 above, within a reasonable period, Customer shall be entitled to effect the repair or obtain replacement of the Work itself or by means of others at the Supplier's cost. Supplier's liability in respect of such costs shall be limited to one hundred percent (100%) of the price Supplier would have charged to repair, replace or re-perform the defective Work.
- 12.6. Replacements, repairs and corrective work shall not extend the warranty but shall be warranted for the warranty term remaining at the time of the replacement, repair or corrective work.
- 12.7. Supplier shall not be liable for any defects which arise due to defective Free-Issue Items or unsuitable or improper use, faulty assembly and/or operational set-up of the Work by the Customer or any third party or as a result of natural wear or defective or careless handling or unsuitable operation or repair work carried out by or on behalf of the Customer or faulty building work or chemical, electromechanical, or electrical influences in so far as they are not traceable to the fault of the Supplier. Failure to follow, in the case of Equipment, the maintenance schedule and/or any other instructions or documentation provided with the Work shall void this warranty.
- 12.8. In respect of components and goods which have not been manufactured by the Supplier and which have been integrated in the Equipment, this warranty shall not apply instead Customer shall benefit from the warranty offered by the original manufacturer or selected supplier.
- 12.9. The undertakings in this Clause 12 are in lieu of any other warranty whether expressed or implied, including any implied warranties of merchantability, fitness for purpose, or workmanlike performance; or any warranty in tort, law or otherwise.

### **13. Free-Issue Items and Customer- Funded Items**

- 13.1. All materials, tooling, equipment, and parts that Customer furnishes to Supplier, or funds Supplier to purchase on its behalf, under the provisions of the Purchase Order (hereinafter "Free-Issue Items") shall be delivered in sufficient time to enable Supplier to meet its delivery schedule. If such Free-Issue Items are not delivered to Supplier in sufficient time, the resultant delay of Supplier in delivering to Customer shall be excusable in accordance with the "Force Majeure" clause. Supplier shall be entitled as well to revise its delivery schedule and price.
- 13.2. All Free-Issued Items shall be delivered free of defects. Should any defect be uncovered before or during the manufacturing process, Customer shall replace such defective Free-Issue Item or allow Supplier to repair it at Customer expense. Any delay resulting from such defective Free-Issue Item shall trigger a proportional and corresponding extension to the delivery date.
- 13.3. Title to any Free-Issue Items shall remain with Customer or Customer's Client as the case may be.
- 13.4. Any Customer Free-Issued Items shall be used for and in the performance of the Purchase Order unless otherwise directed by Customer in writing.
- 13.5. Upon completion or termination of the Purchase Order, any Free-Issue Items shall be dispositioned in accordance with instructions from Customer.
- 13.6. Supplier agrees, as a condition of the Purchase Order, that it will properly mark/label, identify and segregate any and all Free-Issue Items in connection with this Purchase Order in such fashion as to clearly identify such items as being the property of Customer or Customer's Client as the case may be, at all stages of its possession by Supplier.
- 13.7. Supplier, upon request, shall provide a schedule of all quantities on hand of Free-Issue Items.
- 13.8. Customer shall have the right to make reasonable inspection of Supplier's premises, in relation to the Purchase Order to verify compliance hereof. Customer shall be entitled to commence such audit no later than seven (7) working days after Customer notifies Supplier.

### **14. Title, Risk and Liens**

- 14.1. Except as otherwise provided for in the Contract, risk of damage to or loss of the Work, including for the purpose of the mutual indemnifications and liabilities provided for herein, shall pass to Customer upon delivery.
- 14.2. Title in the Work and/or title in the materials to be used in the manufacture of the Work (unless already property of the Customer) shall pass to the Customer only upon the Customer's payment for such Work and/or materials to be used in the manufacture of such Work in proportion to the total or partial payments made.
- 14.3. All items to be incorporated into the Work or related to the Work and where title has passed to the Customer shall be clearly marked as the Customer's property and stored separately.
- 14.4. Supplier agrees that it shall not allow any liens to attach to the Work or any property of the Customer and that it shall furnish, upon request, receipts and releases with respect to the Work showing that all related costs and

- expenses have been paid (and thus, that no third party claims, liens, or rights of liens exist against the Customer or its property or the Work). Supplier shall be responsible for and shall save, indemnify, defend and hold harmless Customer against any such lien or attachment.
- 14.5. Notwithstanding the foregoing, the Parties expressly agree that the Supplier shall have a general lien on all goods and property of the Customer in the possession of the Supplier in respect of all sums due from the Customer to the Supplier but unpaid.

## **15. Variations**

- 15.1. All Variations must be agreed in writing in accordance with Clause 2.2 above.
- 15.2. The Parties shall use their best endeavours to agree to the existence and effects of a Variation prior to the commencement of any Work affected by that Variation, including the impact, if any, on the Contract price and/or delivery date(s).
- 15.3. If at any time the Parties do not agree as to the existence and/or effects of a Variation, such dispute shall be resolved in accordance with the Dispute Resolution Procedure set out in Clause 30 below

## **16. Suspension**

- 16.1. The Customer shall have the right, by notice to the Supplier, to suspend the Work or any part thereof to the extent detailed in the notice, for any of the following reasons:
- 16.1.1. subject only to Clause 16.3, in the event of some default on the part of the Customer; or
- 16.1.2. if suspension is necessary for the proper execution of the Work; or  
to suit the convenience of the Customer.
- 16.2. Upon receipt of any such notice, the Supplier shall, unless instructed otherwise:
- 16.2.1. discontinue the Work or the part of the Work detailed in the notice, on the date and to the extent specified; and
- 16.2.2. properly protect and secure the Work as required by the Customer in the notice
- 16.3. In the event of default on the part of the Supplier and before the issue by the Customer of a notice to suspend the Work or any part thereof the Customer shall give notice of default to the Supplier giving details of such default. If the Supplier, upon receipt of such notice, does not commence and thereafter continuously proceed with action satisfactory to the Customer to remedy such default the Customer may issue a notice of suspension in accordance with the provisions of Clause 16.1.
- 16.4. Regardless of the reason for the Suspension, the Supplier shall be reimbursed for the Work provided up to the point of suspension.
- 16.5. If suspension results from default on the part of the Supplier, any additional costs reasonably incurred by the Customer as a direct result shall be recoverable by the Customer from the Supplier, only up to the value of the Work which gave rise to the default.
- 16.6. The Customer may, by further notice, instruct the Supplier to resume the Work to the extent specified.
- 16.7. In the event of any suspension, the Parties shall meet at not more than seven (7) day intervals with a view to agreeing a mutually acceptable course of action during the suspension.

## **17. Termination**

- 17.1. Customer shall be entitled, by giving notice to Supplier, to terminate the Contract in whole or in part at any time prior to full delivery, acceptance and/or completion of the Work. Upon receipt of such notice, Supplier shall immediately cease performance of its obligations to the extent instructed in the notice and shall take all reasonable steps to mitigate liabilities arising from the termination.
- 17.2. If Customer terminates the Contract out of convenience, Supplier shall be entitled to receive:
- 17.2.1. Payment in full for all Work performed up to the date of termination; and
- 17.2.2. Reimbursement of all documented, direct, and reasonable charges incurred by Supplier prior to and/or incurred as a direct result of the termination (including cancellation charges if any agreed between Customer and Supplier or applicable under Supplier's sub-contracts); and
- 17.2.3. Payment of any cancellation fee that would have been stated in the Proposal or the Sales Order Confirmation or agreed subsequently in writing by the Parties
- 17.3. If Customer terminates the Contract due to Supplier's default or an insolvency event, Customer shall only be

liable to Supplier for payment of Work satisfactorily performed up to the date of termination together with any other justifiable costs where applicable.

- 17.4. If Customer terminates the Contract due to Supplier's default, Customer shall only be entitled to recover from Supplier payment made for defective Work or non-delivered Work, to the exclusion of any losses, damages, costs and expenses incurred by Customer and which may be available at law or in tort or otherwise.

## **18. Force Majeure**

- 18.1. Neither Party shall be responsible for any failure to fulfil any term or condition of the Contract if and to the extent that fulfilment has been delayed or temporarily prevented by a Force Majeure occurrence, as hereunder defined, which has been notified in accordance with Art. 18.3 and which is beyond the control and without the fault or negligence of the Party affected and which, by the exercise of reasonable diligence, the said Party is unable to provide against.
- 18.2. For the purposes of this Contract only the following occurrences shall be Force Majeure.
- 18.2.1. Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power;
  - 18.2.2. Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
  - 18.2.3. Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
  - 18.2.4. Earthquake, flood, lightning, fire, explosion and/or other natural physical disaster, power outage resulting of circumstances out of the parties control, excluding weather conditions as such, regardless of severity;
  - 18.2.5. Strikes at a national or regional level or industrial disputes at a national or regional level, or strikes or industrial disputes by labour not employed by the affected Party its subcontractors or its suppliers and which affect a substantial or essential portion of the Work;
  - 18.2.6. Maritime or aviation disasters;
  - 18.2.7. Pandemic or epidemic; and
  - 18.2.8. Changes to any general or local Statute, Ordinance, Decree, or other Law, or any regulation or bye-law of any local or other duly constituted authority or the introduction of any such Statute, Ordinance, Decree, Law, regulation or bye-law.
- 18.3. In the event of a Force Majeure occurrence, the Party that is or may be delayed in performing the Contract shall notify the other Party without delay giving the full particulars thereof and shall use all reasonable endeavours to remedy the situation without delay.
- 18.4. Despite the occurrence of a Force Majeure event, Customer shall pay all monies due up to the date of occurrence of the Force Majeure event, for the Work, or part thereof, delivered.
- 18.5. Following notification of a Force Majeure occurrence in accordance with Clause 18.3, the Parties shall meet without delay with a view to agreeing a mutually acceptable course of action to minimise any effects of such occurrence.

## **19. Indemnities**

- 19.1. Supplier shall be responsible for and shall save, indemnify, defend, and hold harmless Customer from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:
- (i) Loss of or damage to property of Supplier whether owned, hired or leased or otherwise provided by Supplier arising from, relating to or in connection with the performance or non-performance of the Contract; and
  - (ii) Personal injury including death or disease to any person employed or engaged on behalf of Supplier arising from, relating to or in connection with the performance or non-performance of the Contract; and
  - (iii) Subject to any other express provisions of the Contract, personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of Supplier; and
  - (iv) Pollution occurring on the premises of Supplier or originating from the property and equipment of Supplier arising from, relating to or in connection with the performance or non-performance of the Contract
- 19.2. Customer shall be responsible for and shall save, indemnify, defend, and hold harmless Supplier from and against all claims, issues, damages, costs (including legal costs) expenses and liabilities in respect of:



- (i) Loss of or damage to property of Customer whether owned by Customer or leased or otherwise provided by Customer arising from, relating to or in connection with the performance or non-performance of the Contract; and
- (ii) Personal injury including death or disease to any person employed by or engaged by Customer arising from, relating to or in connection with the performance or non-performance of the Contract; and
- (iii) Subject to any other express provisions of the Contract, personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of Customer; and
- (iv) Any loss of or damage to property of any third party and any Consequential Loss arising therefrom where such loss or damage is arising from, relating to or in connection with the performance or non-performance of the Contract; and

19.3. For the purposes of this Clause 14, “third party” shall mean any party which is not Customer or Supplier.

19.4. The indemnities given by the Parties under this Clause 19 are full and primary and shall apply irrespective of whether the indemnified Party has or does not have insurance in place relating to any claims, losses, damage or costs in respect of the subject matter of any indemnity given under these Standard Terms and Conditions.

19.5. All exclusions and indemnities given under this Clause 19 (save for those under Clause 19.1.2 and Clause 20) shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any claim in tort, law or otherwise.

19.6. Each Party expressly agrees that the indemnities set out in this Clause 19 do not extend to criminal sanctions imposed upon it, arising from, relating to or in connection with the performance of the Contract.

## **20. Consequential Loss**

Notwithstanding any other provision of the Contract to the contrary and except to the extent of any agreed liquidated damages provided for in the Contract, Customer shall save, indemnify, defend and hold harmless Supplier from Customer’s own Consequential Loss and Supplier shall save, indemnify, defend and hold harmless Customer from Supplier’s own Consequential Loss arising from, relating to or in connection with the performance or non-performance of the Contract.

## **21. Limitation of Liability**

Notwithstanding any other provision to the contrary in the Contract and regardless of cause, Supplier’s total cumulative liability arising under or in connection with the Contract shall be limited to one hundred percent (100%) of the Contract price or annual Contract value, whichever is lower. Customer agrees to indemnify, release, and hold Supplier harmless from and against all claims in excess of the total cumulative liability under the Contract.

## **22. Intellectual Property**

To the extent any Intellectual Property is created or otherwise arise in connection with:

- a) developments by a Party which are based wholly on data, equipment, processes, substances and the like in the possession of the Party at the date of the Purchase Order or otherwise produced outside of the Purchase Order; or
- b) enhancements of or in the existing Intellectual Property rights of a Party,

such rights shall remain the property of said Party.

Unless otherwise agreed, the Parties shall be entitled to the joint benefit and ownership of all Intellectual Property arising out of or in connection with the Work.

## **23. Confidentiality**

Each Party shall protect from disclosure information of the other Party to which it receives access under the Contract which is marked as “Confidential” or which is confidential in nature (including pricing and trade secrets) and shall not disclose same to any third party without the prior written consent of the other Party.

Each Party shall be responsible for and shall save, indemnify, defend and hold harmless the other Party against any violation of Confidentiality arising out of or in connection with the performance of the obligations of Supplier under this Contract.

#### **24. Assignment, Novation and Sub-contracting**

- 24.1. Customer shall not assign, novate or subcontract any or all of its rights and/or obligations under the Contract without the prior written consent of Supplier, which shall not unreasonably be withheld or delayed. Notwithstanding the generality of the foregoing, Customer shall be entitled to sub-contract parts of the Work to its Affiliates in its normal course of business without having to obtain prior written consent.
- 24.2. The Customer undertakes that, in the event of any assignment described above, it will execute without delay a formal assignment of interest in the Contract to the relevant party, to be effective upon the written assumption by the assignee of all obligations of the Customer under the Contract.
- 24.3. The Supplier shall assign neither the Contract nor any part of it nor any benefit or interest in or under it without the prior approval of the Customer which shall not unreasonably be withheld or delayed.

#### **25. Non-Solicitation**

- 25.1 During the term of the Contract and for a period of twelve (12) months thereafter, the Customer agrees not to solicit, recruit or induce, directly or indirectly through third parties, any of the Supplier's employees, consultants or representatives involved in the performance of the Contract to leave, terminate or otherwise end his/her association with the Supplier in Purchase Order to become an employee, consultant or representative of the Customer.
- 25.2 In the event of a breach of Clause 24.1 above, Supplier shall, in addition to any other rights or remedies available to it under Contract or at law, be entitled to claim from Customer a sum equivalent to the annual salary of each affected employee, consultant or representative as compensation for such breach

#### **26. Marketing**

- 26.1. Customer shall authorize Supplier to release, advertise, or publish information, (whether oral or written, in whatsoever format, and regardless of medium) relating to the Purchase Order or Contract and/or relating to Customer's obtaining Goods and/or Services from Supplier. Such authorisation shall not be unduly withheld, and should Customer withhold permission, Customer shall communicate to Supplier the reason for such decision.
- 26.2. This provision shall extend to, but shall not be limited to, the following: news bulletins, press releases articles, brochures, advertisements, marketing material, promotional material, and speeches.
- 26.3. Further, Supplier shall use Customer's trademarks or trade names for the purpose of its marketing activity, should such trademark or trade name be already available on the website of Customer.

#### **27. Data Protection**

In this Art. 27, the following expressions shall have the following meanings:

- (a) "Personal Data" means information defined as such in the Data Protection Act 1998 or information treated as personal data under any other law or regulation applicable to the information and subsequent enactment.
- (b) "Applicable Data Protection Law" means the EU Data Protection Directive (95/46/EC) or other applicable law or regulation as they may be amended from time to time and subsequent enactment.

The Parties acknowledge that in providing the Work, the parties may process Personal Data, and/or disclose it to third parties. The parties shall have in place adequate technical and organisational security measures so that the confidentiality of this processing complies with Applicable Data Protection Law.

#### **28. Audit and Storage of Documents**

- 28.1. Supplier shall keep full and accurate records pertaining to the Work and shall retain such records for a period ending two (2) years from completion of the Work, or such longer period as is specifically required by law.
- 28.2. Customer shall be entitled, at its cost and on giving reasonable notice, to audit the documentation within the

period noted in Clause 28.1 above.

- 28.3. Notwithstanding the generality of the foregoing, Customer shall not be entitled to investigate the make-up of rates and lump sums included in the Contract and Supplier shall not be obliged to disclose any information to Customer which is commercially sensitive and/or would cause Supplier to breach any confidentiality obligations it owes to a third party.
- 28.4. Both Parties shall be entitled to audit the other Party at any time to ensure compliance with Clause 26.

## **29. Third party rights**

No person other than a Party and its permitted assignees shall have any right to enforce any of its terms.

## **30. Dispute Resolution**

If a dispute arises out of or in connection with this agreement or the performance, validity, or enforceability of it (Dispute), then the parties shall follow the procedure set out in this clause:

### **30.1. Negotiation**

- (i) Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Representative of the Supplier and Representative of the Customer shall attempt in good faith to resolve the Dispute.
- (ii) If the Representative of the Supplier and the Representative of the Customer are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to a Senior Manager of the Supplier and a Senior Manager of the Customer who shall attempt in good faith to resolve it.

### **30.2. Mediation**

- (iii) If the Senior Manager of the Supplier and the Senior Manager of the Customer are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within [14] days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than [14] days after the date of the ADR notice.

30.3. No party may commence any court proceedings under clause 30 of these Standard Terms and Conditions in relation to the whole or part of the Dispute until 60 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

30.4. If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the expiry of that 30 day period, or the mediation terminates before the expiry of the agreed period, the Dispute shall be finally resolved in accordance with Art. 35.4 of these Standard Terms and Conditions.

## **31. Health, Safety and Environment**

Supplier places prime importance on health, safety and environment and commits to actively pursue the required standards of HS&E in its performance of the Work.

## **32. Business Ethics**

- 32.1. Both Parties shall uphold the highest standards of business ethics in the performance of the Contract. Honesty, fairness and integrity shall be paramount principles in the dealings between the Parties.
- 32.2. Neither Party shall knowingly involve itself in any business in connection with, or use information arising from, the Contract, in any manner which conflicts with the interests of the other Party.

## **33. Anti-Bribery, Corruption and Conflict Minerals**

- 33.1. Both Parties shall uphold the highest standards of business ethics in the performance of the Contract and warrants that it shall have in place and maintain for the duration of the Contract adequate anti-bribery and corruption policies and procedures of which the other Party in turn warrants it shall comply.

- 33.2. In the event of a breach of this Clause 33.1 above and/or any applicable anti-bribery legislation to which either Party is subject, including the UK Bribery Act 2010 and US Foreign Corrupt Practices Act 1977, the non- defaulting Party shall be entitled to suspend and/or terminate the Contract in whole or in part with immediate effect. The Parties shall meet within seven (7) days of such suspension or termination to agree the effects of such suspension or termination
- 33.3. Both Parties shall certify and ensure that neither Party shall procure, and the Work is not containing tin, tantalum and tungsten or gold ("Conflict Minerals") originated in conflict affected and high-risk areas. Both Parties shall take all measures that are necessary to comply with the UK and European Regulations as they may be amended over time.

#### **34. MODERN SLAVERY ACT**

Both Parties shall commit to comply with the provisions of the Modern Slavery Act 2015 and shall cooperate to resolve any violation arising from the performance of the Contract.

#### **35. Mutual Hold Harmless with respect to Art. 32, 33 and 34**

- 35.1. Customer shall be responsible for and shall save, indemnify, defend, and hold harmless Supplier against any violation of Art. 32, 33 and 34 arising out of or in connection with the performance of the obligations of Customer under this Contract.
- 35.2. Supplier shall be responsible for and shall save, indemnify, defend, and hold harmless Customer against any violation of Art. 32, 33 and 34 arising out of or in connection with the performance of the obligations of Supplier under this Contract.

#### **36. GENERAL LEGAL PROVISIONS**

##### **35.1 Waiver**

None of these Sales Standard Terms and Conditions shall be waived by either Party unless a waiver is given in writing by one Party to the other. No failure on the part of either Party to enforce any of the terms and conditions of the Contract shall constitute a waiver of such terms.

##### **35.2 Supplier's Affiliates**

Any limitation of liability given by the Customer to the Supplier under the Purchase Order shall include the Affiliates of the Supplier.

##### **35.3 Independence of the Supplier**

The Supplier shall act as an independent Supplier with respect to the Work and shall exercise control, supervision, management, and direction as to the method and manner of obtaining the results required by the Customer.

##### **35.4 Proper Law and Language**

The Contract, and any non-contractual rights and obligations arising out of or in connection with it and its subject matter, shall be governed and construed in accordance with either English Law or Scot Law, depending on whether the location of the Supplier's facility delivering the Work to Customer, under the Purchase Order, is situated in England or Scotland. Consequently, the Contract shall be subject to the exclusive jurisdiction of the English Courts if such Supplier's facility is based in England or that of the exclusive jurisdiction of the Scottish Courts should such facility be in Scotland. The ruling language of the Contract shall be the English Language.

##### **35.5 Notices**

All formal notices in respect of the Contract shall be given in writing and delivered by hand, by fax or by first class post to the relevant following addresses:

[..... registered address of Supplier contracting legal entity ...]

Such notices shall be effective:

- (a) if delivered by hand, at the time of delivery.
- (b) if sent by first class post, forty-eight (48) hours after the time of posting.

Subject to any specific administrative instructions agreed between the Parties, any standard business correspondence associated with the Contract and/or the Work may be sent by either e-mail, fax, or letter.

#### **35.6 Entire Agreement**

The Contract constitutes the entire agreement between the Parties hereto with respect to the Work and supersedes all prior negotiations, representations or agreements related to the Contract, either written or oral. No amendments to the Contract shall be effective unless evidenced in writing and signed by the Parties.

#### **35.7 Mitigation of Loss**

Both Parties shall take all reasonable steps to mitigate any loss resulting from any breach of Contract by the other Party.

#### **35.8 Invalidity and Severability**

If any provision of the Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability shall not affect the other provisions of this Contract and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties agree to attempt to substitute, for any invalid or unenforceable provision, a valid or enforceable provision which achieves to the greatest possible extent, the economic, legal, and commercial objectives of the invalid or unenforceable provision.

#### **35.9 Continuing Obligations**

Termination of the Contract and/or Customer's acceptance of Work, or any part thereof, shall not release the Parties from obligations, which expressly or by their nature survive the Contract or extend beyond Contract termination and any acceptance of the Work.

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