

**ZIMMER GROUP (UK) LIMITED**

**(Registered in England & Wales number 06837944)**

**GENERAL TERMS & CONDITIONS**

**CONTENTS**

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**CLAUSE**

1. Interpretation ..... 1

2. Basis of contract ..... 3

3. Goods ..... 4

4. Delivery of Goods ..... 5

5. Quality of Goods ..... 6

6. Title and risk ..... 7

7. Supply of Services ..... 9

8. Customer's obligations ..... 9

9. Charges and payment ..... 10

10. Technical illustrations ..... 12

11. Change Control ..... 13

12. Intellectual property rights ..... 14

13. Data protection ..... 14

14. Confidentiality ..... 16

15. Limitation of liability ..... 17

16. Termination ..... 18

17. Consequences of termination ..... 19

18. Force majeure ..... 20

19. Dispute Procedure ..... 21

20. General ..... 21

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 15 (LIMITATION OF LIABILITY).**

**1. INTERPRETATION**

The following definitions and rules of interpretation apply in these Conditions.

**1.1 Definitions:**

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

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 17.8.

**Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

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

**Customer:** the person or firm who purchases the Goods and/or Services from the Supplier.

**Customer's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services.

**Customer Materials:** all documents, information, items and materials in any form, whether or not owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Services, including the items provided pursuant to clause 8.1(e).

**Deliverables:** the deliverables set out or clearly referred to in the Order produced by the Supplier for the Customer.

**Delivery Location:** has the meaning given in clause 4.2.

**Environmental Requirements:** means the following environmental requirements:

- i) a clean environment reasonably free from dust and other particulates that may reasonably affect the operation of Goods or performance of the Services;
- ii) an environment free of chemical, electrochemical or electrical influences;
- iii) an environment free of aggressive, corrosive or other agents or influence including but not limited to vapours, chemicals, solvents, radiation for example;
- iv) an ambient temperature between 5° and 40°C;
- v) a maximum humidity of 70%; or

vi) such other environmental requirements confirmed in writing by the Supplier or otherwise required in the Goods Specification or Service Specification.

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

**Goods:** the goods (or any part of them) set out in the Order.

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

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

**Minimum Order Value:** the combined price of the Goods in each Order, being no less than £21.00 (€25.00) unless otherwise stated on the Website or otherwise agreed in writing by the Supplier.

**Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

**Service Specification:** the description or specification for the Services provided in writing by the Supplier to the Customer.

**Supplier:** **ZIMMER GROUP (UK) LIMITED**, registered in England and Wales with company number 06837944 and whose registered office is at Gibraltar House First Avenue, Centrum One Hundred, Burton-On-Trent, Staffordshire, England, DE14 2WE.

**Supplier Materials:** has the meaning given in clause 8.1(h).

**Website:** means <https://www.zimmer-group.com/en/>

## 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.

- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes email but not fax or text from a mobile phone.

## 2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 These Conditions apply to the Contract to the exclusion of:
  - (a) the General Terms & Conditions for Deliveries in the General System Business; or
  - (b) the General Terms & Conditions for Assembly, Commissioning, Repair, Maintenance and Other Services.

Any provision of Goods and Services generally shall be subject to these Conditions, except where such provision of goods and services are otherwise provided by the Supplier to the Customer ancillary to or in relation to General Systems Business (including but not limited to the supply of Gripper Systems or Complete Systems) under the General Terms & Conditions for Deliveries in the General System Business, or in relation to or ancillary to Assembly, Commissioning, Repair, Maintenance and Other Services under the General Terms & Conditions for Assembly, Commissioning, Repair, Maintenance and Other Services.

- 2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.8 The Customer waives any right it might otherwise have or seek to rely upon and/or on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions. In particular, the Customer specifically agrees and confirms that these Conditions supersede and replace any conditions of purchase that derive from the Customer (or any connected party thereto)

### **3. GOODS**

- 3.1 The Goods are described in the Supplier's catalogue as modified by any applicable Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Goods Specification:
- (a) if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event; and
  - (b) in the event that improvements to technology are available to the Supplier at commercially reasonable prices,
- and the Supplier shall notify the Customer in any such event.
- 3.4 Amendments made to Goods in accordance with clause 3.3 shall be made prior to delivery of the Goods. This clause 3 will not obligate the Supplier to amend any Goods already delivered in accordance with clause 4.
- 3.5 The Goods are supplied with installation and operating instructions in German and English languages at no additional charge. Instructions can be provided in all official languages of the European Community at additional charge. A list of prices for instructions in non-European Community languages can be viewed via our Website, or at the following [link](#).

- 3.6 Installation and operating instructions supplied are in conformity with the Machinery Directive 2006/42/EC (Machinery Directive) and in particular Annex I, Chapter 1.7.4 ff, and the Supplier shall provide a Declaration of Conformity in accordance with Annex II A or a Declaration of Incorporation in accordance with Annex II B of the Machinery Directive on delivery of the Goods.
- 3.7 Upon request the Supplier shall provide manufacturer operating instructions in such format as shall be reasonably required.

#### 4. DELIVERY OF GOODS

- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - (b) it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is

caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

4.8 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, the Supplier shall make a pro rata adjustment to the invoice for the Goods.

4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5. QUALITY OF GOODS

5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:

- (a) conform in all material respects with their description and any applicable Goods Specification (as amended in accordance with clause 3.3); and
- (b) be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.



5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Customer failing to maintain the Environmental Requirements;
- (d) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
- (e) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (g) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## **6. TITLE AND RISK**

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

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery; and
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 16.2(b) to clause 16.2(d).

6.4 Until title to Goods has passed to the Customer, the Customer shall:

- (a) store those Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to those Goods;
- (c) maintain those Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Supplier. The Customer shall obtain an endorsement of the Supplier's interest in the Goods on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow the Supplier to inspect those Goods and the insurance policy; and
- (d) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
  - (i) the Goods (including but not limited to their location); and
  - (ii) the ongoing financial position of the Customer.

6.5 Subject to clause 6.6, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.6 At any time before title to the Goods passes to the Customer, the Supplier may:

- (a) by notice in writing, terminate the Customer's right under clause 6.5 to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7. SUPPLY OF SERVICES**

- 7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in writing by the Customer and agreed in writing by the Supplier, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## **8. CUSTOMER'S OBLIGATIONS**

- 8.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
  - (b) co-operate with the Supplier in all matters relating to the Services;
  - (c) appoint a manager for the Services which sufficient authority to contractually bind the Customer on matters relating to the Services (including signing Change Orders and providing approval or acceptance where required);
  - (d) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation, telephone and internet access and other facilities as reasonably required by the Supplier to provide the Services;
  - (e) provide the Supplier with the Customer's value added tax registration number when placing an Order;
  - (f) provide the Supplier with such documents, information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - (g) prepare the Customer's premises for the supply of the Services;
  - (h) maintain the Customer's premises in accordance with the Environmental Requirements prior to receipt of the Goods or supply of the Services, and during any storage or operation of the Goods or supply of the Services;
  - (i) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start and comply

with all relevant legislation as required to enable the Supplier to provide the Services, including in relation to the operation of the Supplier's Equipment, the use of all Customer Materials and the use of the Customer's Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start;

- (j) comply with all applicable laws, including health and safety laws;
- (k) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (l) comply with any additional obligations as set out in the Service Specification and the Goods Specification, or as otherwise required by the Supplier.

8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 9. CHARGES AND PAYMENT

9.1 The Supplier will be entitled to require advance payment at its discretion. Otherwise, and unless otherwise agreed in writing by the Supplier, the Order shall set out whether the proportion or frequency upon which the price for Goods or charges for Services are payable including, for example, payment by way of instalments (and if so in what proportion and upon what dates), and/or payment on the achievement of a milestone (and if so in what proportion and upon what milestones).

9.2 The price for Goods:

- (a) shall be above the Minimum Order Value;

- (b) shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery; and
- (c) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

9.3 Unless the Supplier has otherwise agreed a fixed price for the supply of Services, the charges for Services shall be calculated on a time and materials basis:

- (a) the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Order or as the Supplier shall notify the Customer from time to time;
- (b) the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
- (c) the Supplier shall be entitled to charge an overtime rate based upon a percentage of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause (b)9.3(b) as set out in the Order or as the Supplier shall notify the Customer from time to time; and
- (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses and during any suspension of the Services where indicated in these terms and conditions, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

9.4 The Supplier reserves the right to:

- (a) increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index;
- (b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
  - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
  - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

- 9.5 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services.
- 9.6 Unless otherwise set out in the Order, or otherwise agreed in writing by the Supplier, the Customer shall pay each invoice submitted by the Supplier:
- (a) within 14 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 9.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods. If the Customer fails to provide a VAT registration number to the Supplier in accordance with clause 8.1(e) the Supplier will be entitled to charge the statutory VAT chargeable in the country of origin of the Goods or Services.
- 9.8 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 16, the Customer 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 9.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%. Interest will be compounded on the last Business Day of each calendar month until paid in full.
- 9.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **10. TECHNICAL ILLUSTRATIONS**

- 10.1 Where the supply of Goods or Services requires the creation of technical illustrations by the Supplier, or receipt of technical illustrations by the Supplier, such technical illustrations shall comply with this clause 10.
- 10.2 Unless otherwise agreed in writing by the Supplier:
- (a) 3D illustrations will be provided or received in STEP file format; and
  - (b) 2D illustrations will be provided or received in DWG/DXF file format.

- 10.3 Unless otherwise agreed in writing by the Supplier, the Customer shall perform:
- (a) a device/machine disturbance contour examination; and
  - (b) a load capacity and range examination,
- in respect of the relevant Goods, parts, component or equipment.
- 10.4 The final inspection of the Goods, parts, component or equipment will be deemed to be performed and acceptable to the Customer following any technical release from the Customer of each Good, part, component or equipment.
- 10.5 The Supplier may offer technical illustrations in alternative file formats at additional cost to the Customer.

## 11. CHANGE CONTROL

- 11.1 Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a **Change Order** has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:
- (a) the Services;
  - (b) the Supplier's existing charges;
  - (c) the timetable of the Services;
  - (d) the Order; and
  - (e) any of these terms and conditions.
- 11.2 If the Supplier wishes to make a change to the Services it shall provide a draft Change Order to the Customer.
- 11.3 If the Customer wishes to make a change to the Services:
- (a) it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed changes; and
  - (b) the Supplier shall, as soon as reasonably practicable after receiving the information at clause 11.3(a), provide a draft Change Order to the Customer.
- 11.4 If the parties:
- (a) agree to a Change Order, they shall sign it and that Change Order shall amend this agreement; or
  - (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 19.

11.5 The Supplier may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 11.3 on a time and materials basis at the Supplier's daily rates specified in the Order or otherwise notified to the Customer from time to time.

## 12. INTELLECTUAL PROPERTY RIGHTS

12.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

12.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

12.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 12.2.

12.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## 13. DATA PROTECTION

13.1 The following definitions apply in this clause 13:

(a) **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

(b) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

(c) **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.

13.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.



- 13.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor.
- 13.4 Without prejudice to the generality of clause 13.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of the Customer for the duration and purposes of the Contract.
- 13.5 Without prejudice to the generality of clause 13.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
- (a) process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;
  - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

- (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
  - (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
  - (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Domestic Law to store the Personal Data; and
  - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 13.6 The Customer consents to the Supplier appointing a third-party processor of Personal Data under the Contract. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business which the Supplier confirms will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 13.6.
- 13.7 Either party may, at any time on not less than 30 days' notice, revise this clause 13 by replacing it with any applicable controller to processor standard clauses or similar terms adopted by the Information Commissioner or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

#### **14. CONFIDENTIALITY**

- 14.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 14.2.
- 14.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall

ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

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

## **15. LIMITATION OF LIABILITY**

### **YOUR ATTENTION IS DRAWN TO THIS CLAUSE 15**

15.1 The restrictions on liability in this clause 15 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

15.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

15.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- (d) defective products under the Consumer Protection Act 1987.

15.4 Subject to clause 15.3, the Supplier's total liability to the Customer shall not exceed the aggregate value of the Contract under which the Customer's claim arises.

15.5 This clause 15.5 sets out specific heads of excluded loss and exceptions from them:

- (a) Subject to clause 15.2 and clause 15.3, clause 15.5(c) identifies the kinds of loss that are not excluded. Subject to that, clause 15.5(b) excludes specified types of loss.
- (b) The following types of loss are wholly excluded:
  - (i) loss of profits;
  - (ii) loss of sales or business;
  - (iii) loss of agreements or contracts;
  - (iv) loss of anticipated savings;
  - (v) loss of use or corruption of software, data or information;

- (vi) loss of or damage to goodwill; and
  - (vii) indirect or consequential loss.
- (c) The following types of loss and specific loss are not excluded:
- (i) sums paid by the Customer to the Supplier pursuant to the Contract, in respect of any Goods or Services not provided in accordance with the Contract;
  - (ii) wasted expenditure;
  - (iii) additional costs of procuring and implementing replacements for, or alternatives to, Goods or Services not provided in accordance with the Contract. These include but are limited to consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials; and
  - (iv) losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been directly caused by the act or omission of the Supplier. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including but limited to those made or commenced by the Suppliers immediate subcontractors, the Supplier's personnel, regulators and customers of the Customer.

15.6 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

15.7 This clause 15 shall survive termination of the Contract.

## **16. TERMINATION**

16.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than three months' written notice.

16.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 10 Business Days after receipt of notice in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on

business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

16.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of Control of the Customer.

16.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 16.2(b) to clause 16.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## **17. CONSEQUENCES OF TERMINATION**

17.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

17.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

17.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## 18. FORCE MAJEURE

18.1 **Force Majeure Event** means any circumstance not in a party's reasonable control including:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic on a national or local basis;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination, or sonic boom;
- (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in the case of the case of the Customer, or companies in the same group as the Customer party); and
- (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the Customer); and
- (i) interruption or failure of utility service.

18.2 Provided it has complied with clause 18.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement 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 accordingly.

18.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, 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 agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

18.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 12 weeks' the party not affected by the Force Majeure Event may terminate this agreement by giving two weeks' written notice to the Affected Party.

## 19. DISPUTE PROCEDURE

19.1 If a dispute arises out of or in connection with these terms and conditions or the performance, validity or enforceability of them (**Dispute**) then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the manager of the Customer appointed in accordance with clause 8.1(c) (**Customer's Manager**) and a representative of the Supplier shall attempt in good faith to resolve the Dispute;
- (b) if the Customer's Manager and the Supplier's representative are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to senior representatives of the Customer and Supplier who shall attempt in good faith to resolve it; and
- (c) if the senior representatives of the Customer and the Supplier are for any reason unable to resolve the Dispute within 10 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 10 days after the date of the ADR notice.

19.2 No party may commence any court proceedings under clause 20.10 (in relation to the whole or part of the Dispute) until 15 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

19.3 If the Dispute is not resolved within 20 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 20 days, or the mediation terminates before the expiration of the said period of 20 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 20.10.

## 20. GENERAL

### 20.1 Assignment and other dealings

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

**20.2 Notices.**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) 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
  - (ii) sent by email to the address specified in the Contract.
- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 20.2(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- (d) A notice given under the Contract is not valid if sent by fax or mobile phone text.

**20.3 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 20.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

**20.4 Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**20.5 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.

**20.6 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

**20.7 Third party rights.**

- (a) 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.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**20.8 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

**20.9 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.

**20.10 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.