

HITACHI INFORMATION CONTROL SYSTEMS EUROPE LTD.

GENERAL CONDITIONS OF PURCHASE

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

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 set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 18.7.

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

Customer: Hitachi Information Control Systems Europe Ltd. whose registered office is: -
Solstice House, Middleton Drive, Bradford on Avon, Wiltshire, BA15 1GB

Customer Materials: has the meaning set out in clause 5.3(i).

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

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

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

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

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

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

Service Specification: the description or specification for Services agreed in writing by the Customer and the Supplier.

Software: the computer program(s), software or software elements as well as the documents associated therewith, in printed or electronic form, which are listed in the Order and in relation to which the Supplier grants rights to the Customer.

Supplier: the person or firm from whom the Customer purchases the Goods and/or Services and/or Software.

1.2 **Construction.** In these Conditions, the following rules apply:

- (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 personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) words importing the singular also include the plural and vice-versa where the context requires; and
- (f) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS AND SCOPE OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services and/or Software from the Supplier in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

- (a) the Supplier issuing written acceptance of the Order; or
- (b) any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 These Conditions will apply to the Customer's (i) purchase of Goods and/or Services and/or; (ii) licensing of Software; specified in the Order unless the purchasing of Goods and/or Services and/or the licensing of Software is governed by a separate written agreement signed by an authorised representative of the Customer.

3. SUPPLY OF GOODS

3.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description and any applicable Goods Specification;

- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;
- (c) where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 The Customer shall have the right to inspect and test the Goods at any time before delivery.

3.4 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (c) if the Supplier requires the Customer to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

- (a) on the date specified in the Order or, if no such date is specified, then within 14 days of the date of the Order;
- (b) to the Customer's premises or such other location as is set out in the Order or as instructed by the Customer before delivery (**Delivery Location**);
- (c) during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.

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- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 7.1.
- 4.5 Title and risk in the Goods shall pass to the Customer on completion of delivery.

5. SUPPLY OF SERVICES

- 5.1 The Supplier shall from the date set out in the Order and for the duration of this Contract provide the Services to the Customer in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Customer.
- 5.3 In providing the Services, the Supplier shall:
- (a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
 - (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
 - (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
 - (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
 - (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
 - (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
 - (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation; and

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- (j) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services.

6. SOFTWARE LICENCING

- 6.1 This clause 6 is applicable to the licensing of any Software by the Supplier to the Customer under an Order.
- 6.2 Unless otherwise governed by a separate written agreement between the Parties, Software shipped or delivered to the Customer will be unconditionally subject to these Conditions and constitute the entire agreement between the parties concerning rights in the Software and supersede any Supplier proposed license terms and conditions or other documentation.
- 6.3 The Supplier hereby grants the Customer a non-exclusive, worldwide, perpetual and irrevocable license (including the right to sublicense) to use, execute, reproduce, display, perform, distribute (through multiple tiers) copies of and prepare derivative works based upon any and all Software provided under the Order.
- 6.4 The Supplier understands and agrees that the Software may be
 - (a) used or copied for use, in or with a computer owned or leased by, or on behalf of, the Customer provided that the Software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the Supplier;
 - (b) reproduced for safekeeping (archive or backup purposes);
 - (c) modified, adapted or combined with other software, provided that the modified, combined or adapted portions of the derivative software incorporating Software which is subject to restrictions will be subject to the same restricted rights; and
 - (d) disclosed and reproduced for use by the Customer's designees in accordance with these Conditions.
- 6.5 The Supplier represents and warrants that the Software licensed to the Customer under these Conditions does not contain and will remain free of material errors, viruses and malicious codes, and will perform according to the specifications and documentation for such Software. The Supplier warrants and represents that in licensing the Software to the Customer under these Conditions, the Supplier is in compliance with any applicable third party licenses related to the Software including, but not limited to, free and/or open source software licenses (FOSS). The Supplier warrants and represents that in no event will the intellectual property rights of the Customer, the Customer's customers' or any third party performing on behalf of the Customer be subject to any FOSS licenses.

For clarity, the term "Software" as used in this PO shall include all software that the Customer may acquire from the Supplier pursuant to the applicable Order as well as all Customer Owned Developments (as defined in clause 10 below). All rights and license granted to the Customer hereunder may be exercised by any member of the Customer corporate group.

7. CUSTOMER REMEDIES

- 7.1 If the Supplier fails to deliver the Goods and/or the Software and/or perform the Services by the applicable date, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:

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- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods and/or the Software which the Supplier attempts to make;
 - (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
 - (d) where the Customer has paid in advance for Services that have not been provided by the Supplier and/or Goods and/or Software which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
 - (e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.

7.2 If the Goods or Services are not delivered by the applicable date, the Customer may, at its option, claim or deduct 2.5 (two and a half) per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 15 (fifteen) per cent of the total price of the Goods. If the Customer exercises its rights under this clause 7.2 it shall not be concurrently entitled to any of the remedies set out in clause 7.1 in respect of the Goods' late delivery.

7.3 If the Supplier has delivered Goods and/or Software and/or Services that do not comply with the undertakings set out in clause 3.1, 5.3 or 6.5, then, without limiting its other rights or remedies, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods and/or the Services and/or the Software:

- (a) to reject the Goods and/or Software and/or Deliverables (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (c) to require the Supplier to repair or replace the rejected Goods and/or Software and/or Deliverables, or to provide a full refund of the price of the rejected Goods and/or Software and/or Deliverables (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods and/or Software and/or Deliverables which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods and/or software and/or deliverables from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods and/or Software and/or Deliverables in accordance with clause 3.1, 5.3 or 6.5.

7.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

7.5 The Customer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

8. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and
- (b) provide such information as the Supplier may reasonably request for the provision of the Services and the Customer considers reasonably necessary for the purpose of providing the Services.

9. CHARGES AND PAYMENT

9.1 The price for the Goods:

- (a) 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 in force at the Commencement Date; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Customer. No extra charges shall be effective unless agreed in writing and signed by the Customer.

9.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

9.3 In respect of Goods and/or Software, 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. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

9.4 In consideration of the supply of Goods and/or Software and/or Services by the Supplier, the Customer shall pay the invoiced amounts within [30] days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

9.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued 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 Goods and/or Software and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

9.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

- 9.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.
- 9.8 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 Customer shall own all rights, title and interest in and to any data, results or work product, including any and all intellectual property rights therein or thereto, resulting from the work performed or delivered by or on behalf of Supplier for Customer that arises from, is based on or relates to Supplier's use of Customer confidential information or any and all materials, data, information or other items provided by or on behalf of Customer or an affiliated entity of Customer or for which Customer paid Supplier (the "**Customer Owned Developments**"). Supplier hereby assigns and will assign to Customer any and all rights, title and interest Supplier may have in Customer Owned Developments. Supplier shall disclose to Customer any and all Customer Owned Developments including, but not limited to, inventions. Supplier shall have no rights of ownership or use in any Customer Owned Developments.
- 10.2 Customer Owned Developments shall not include Supplier Owned Developments. As used herein, "**Supplier Owned Developments**" means intellectual property that: (i) was developed by Supplier prior to providing work to Customer under the Order or any other agreement between Supplier, on the one hand, and Customer on the other; or (ii) (A) is developed by Supplier in the course of providing the work; and (B) does not arise from, is not based on or does not relate to Supplier's use of Customer confidential information or any and all materials, data, information or other items provided by or on behalf of Customer; and (C) reasonably could be used by Supplier without revealing or disclosing any Customer confidential information; and (D) can be used for purposes not exclusively related to Customer confidential information.
- 10.3 Supplier shall not incorporate Supplier Owned Developments into any Customer Owned Developments without the express written agreement of Customer.
- 10.4 To the extent that Supplier Owned Developments are incorporated into Customer Owned Developments or Supplier Owned Developments are necessary to use Customer Owned Developments, Supplier shall deliver such Supplier Owned Developments to Customer (or a Customer designee) at no additional charge and Supplier hereby grants to Customer a non-exclusive, royalty-free, worldwide, irrevocable license for Customer and its affiliated entities to use such Supplier Owned Developments in connection with Customer Owned Developments. Customer shall have the right to sublicense the use of such Supplier Owned Developments to affiliated entities of Customer and subcontractors and sublicensees of Customer or affiliated entities of Customer in connection with the use of Customer Owned Developments.
- 10.5 Supplier agrees to assist Customer in obtaining, registering, maintaining and enforcing all rights and other legal protections for Customer Owned Developments and to execute any and all documents that Customer may reasonably request in connection therewith, including any patent, trademark and copyright assignment document(s). Supplier further agrees to give Customer and its designees or assignees all assistance reasonably required to perfect such rights, titles and interests. Supplier, by way of security for its obligations of assistance under this clause 10, hereby irrevocably appoints, constitutes and designates Customer and its duly authorized

officers and agents as Supplier's agents and to act for and on Supplier's behalf and in the name of Supplier to execute, seal, deliver and file or otherwise effect any deed, agreement, instrument or document and to do all other lawfully permitted acts to further the above purposes with the same legal force and effect as if done by Supplier.

11. INDEMNITY

11.1 The Supplier shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered incurred by the Customer as a result of or in connection with:

- (a) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods and/or the Software, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods and/or the Software and/or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

11.2 This clause 11 shall survive termination of the Contract.

12. MAINTENANCE AND SUPPORT

12.1 The primary Customer support responsibilities shall cover the technical support of the Software, i.e.: anomalies encountered during installation of the Software; delivery of installation processes for the Software and Software upgrades; information on the levels of operating systems or third party software packages supported; anomalies encountered in the functioning of the Software.

12.2 The Customer may also use Customer support to receive functional support, such as: support with use of the Software or support with configuration of the Software.

12.3 During the term of execution of the support services under the Contract, the Supplier shall ensure technical support pertaining to the use of the Software, by telephone from Monday to Friday (excluding public holidays) from 8.00am to 6.00pm. Support shall be provided by qualified technical personnel who speak English. The number of telephone calls that the Customer's representatives may make shall be unlimited.

12.4 In the framework of the provisions set out above, the maintenance services include corrective maintenance, adaptive maintenance and upgrades. Maintenance services also include regulatory maintenance, i.e. ensuring the Software is maintained in accordance with the applicable laws and regulations arising from public policy.

12.5 Corrective maintenance services include: the provision of a workaround and/or a fix under the conditions of intervention defined between the Parties. Adaptive maintenance services and upgrades include: the delivery of major and minor new versions and upgrades, with the Supplier reserving all rights and remaining the sole owner of the realisation and the rollout of the aforementioned new versions and upgrades of the Software and the associated documentation; maintenance services also include regulatory maintenance, i.e. ensuring the Software is maintained in accordance with the applicable laws and regulations, as per the documentation and information provided by the Supplier.

13. INSURANCE

During the term of the Contract and for a period of 2 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

14. CONFIDENTIALITY

14.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

14.2 This clause 14 shall survive termination of the Contract.

15. TERMINATION

15.1 Without limiting its other rights or remedies, the Customer may terminate the Contract:

- (a) in respect of the supply of Goods and/or Software and/or Services, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods and/or Software and/or Deliverables at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

15.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract by giving the Customer 3 months' written notice.

15.3 In any of the circumstances in these Conditions in which a party may terminate the Contract, where any two of the Goods, the Software or the Services are supplied, that party may terminate the Contract in respect of

the Goods, or in respect of the Services, or in respect of the Software and the Contract shall continue in respect of the remaining supply.

15.4 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing to do so;
- (b) the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- (c) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (d) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier];
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (f) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- (g) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- (i) the holder of a floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (k) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.4(c) to clause 15.4(j) (inclusive);
- (l) the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business; or

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- (m) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

15.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

15.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

16. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

17. FORCE MAJEURE

17.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from an event, circumstances or cause beyond its reasonable control (**Force Majeure Event**).

17.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

17.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than ninety (90) Business Days, the Customer may terminate the Contract immediately by giving written notice to the Supplier.

18. GENERAL

18.1 Assignment and other dealings.

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

18.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

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- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 18.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 18.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 18.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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.
- 18.5 **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, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 18.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 18.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Customer.
- 18.8 **Entire Agreement.** This Contract constitutes the entire understanding between the Parties relating to the Order and, save as expressly referred to or referenced herein, supersedes all prior representations, course of dealings, writings, negotiations or understandings, including oral communications with respect hereto.
- 18.9 **Anti-Bribery.** The Supplier shall comply with all applicable anti-bribery and anti-corruption legislation including (without limitation) the Bribery Act 2010 and the United States Foreign Corrupt Practices Act 1977, and any applicable European Union Directives. Throughout the performance of the Contract the Supplier shall maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act 2010 and the United States Foreign Corrupt Practices Act 1977, to ensure compliance with all applicable anti-bribery and anti-corruption legislation and European Union Directives. Adequate procedures will be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of the Act).
- 18.10 **Export Control and Foreign Trade Regulations.** The Supplier shall comply with all applicable export control, customs and foreign trade regulations ("Foreign Trade Regulations"). The Supplier shall advise the Customer in writing within seven (7) Business Days of receipt of any Order (and in the case of any changes, without undue delay) any information and data required by the Supplier to comply with all Foreign Trade Regulations in case of export and import as well as re-export, including without limitation:

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- (a) All applicable export list numbers, including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN); and
 - (b) The statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding; and
 - (c) The country of origin (non-preferential origin); and (on request) Supplier's declaration of preferential origin.

18.11 **Modern Slavery.** The Supplier hereby warrants and represents to the Customer that:

- (a) neither it nor any of its officers, employees, agents or subcontractors has:
 - (i) committed an offence under the Modern Slavery Act 2015 (a "MSA Offence"); or
 - (ii) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- (b) it shall comply with the Modern Slavery Act 2015;
- (c) it shall notify the Customer immediately in writing if it becomes aware that, or has reason to believe that, it or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Supplier's obligations under this sub-clause (18.11).

18.12 Notwithstanding any other provision of this agreement, a breach of sub-clause 18.11 by the Supplier shall be deemed a material breach of this agreement and shall entitle the Customer to terminate this agreement immediately without liability to the Supplier.

18.13 If the Supplier is permitted to delegate or sub-contract any of its duties or obligations under this agreement it shall at all times remain liable to the Customer for the performance of those duties and obligations. The Supplier's contract with a sub-contractor:

- (a) must be in writing;
- (b) must contain a provision substantially the same as this clause, including an obligation to comply with the Modern Slavery Act 2015;
- (c) must prohibit the sub-contractor from further sub-contracting the services it has agreed to provide; and
- (d) must contain a provision entitling the Supplier to audit its sub-contractor to ensure compliance with the Act.

18.14 The Supplier shall during the term of this agreement, and for the period of six years thereafter, maintain such records relating to the goods and/or services provided to the Customer under this agreement as may be necessary to trace the supply chain of such goods and/or services.

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- 18.15 The Customer (or a third party acting on its behalf) shall have the right from time to time at its own cost to conduct an audit of the Supplier's operations, facilities and working conditions and its quality, environmental, ethical and health and safety procedures and systems to ensure that the Supplier has the appropriate facilities, procedures, systems and personnel to perform the services and/or provide the goods in accordance with this agreement and for that purpose shall be entitled to have access to the Supplier's premises and to any premises of the Supplier's sub-contractors or agents where the services are being performed and/or goods are being produced during normal working hours on giving reasonable notice to the Supplier.
- 18.16 The Supplier shall, at its own cost, perform appropriate remediation actions to address any issues or failures identified by an audit carried out pursuant to sub-clause (18.15) within such timescales as are agreed with the Customer.
- 18.17 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 18.18 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).