

DEFINITIONS AND INTERPRETATION

1.1. DEFINITIONS

The following expressions and derivatives thereof appearing in capital letters in this ORDER shall have the meaning hereby assigned to them unless otherwise specified.

"AFFILIATE" shall mean any subsidiary or holding company of the COMPANY or any other subsidiary of such holding company. For the purpose of this definition "subsidiary" and "holding company" shall have the meanings given to those expressions in Section 1159 and Schedule 6 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in Sections 1159 (1) (b) and (c) thereof as a matter of another company even if its shares in that company are registered in the name of (a) another person (or its nominee, whether by way of security or in connection with the taking of security, or (b) its nominee.

"APPLICABLE LAWS" shall mean all laws, ordinances, rules, regulations, by-laws, decrees, orders and the like, whether governmental or other authority or agency having jurisdiction over the PARTIES and the WORK and which are or may become applicable.

"APPROVAL" means the COMPANY'S prior written approval. "APPROVE" or "APPROVED" shall be construed accordingly.

"BRIBERY ACT 2010" means the BRIBERY ACT 2010

"CLAIM" or "CLAIMS" means any claim, demand, cause of action, proceedings, judgement, award (including reasonable legal fees, costs and expenses and reasonable sums paid by way of settlement or compromise) liability, loss, expense, penalty, fine and damages arising from or relating to or in connection with the performance or non-performance of the ORDER.

"COMPANY" means Kawasaki Precision Machinery (UK) Limited (registered in England and Wales with company number 2833215).

"COMPANY'S BRIBERY, ENTERTAINMENT & GIFTS POLICY" means the COMPANY'S Bribery, Entertainment and Gifts Policy, a copy of which is available on request.

"COMPANY GROUP" means COMPANY, its and their AFFILIATES, and its and their respective directors, officers and employees (including agency personnel) but shall not include any member of the SUPPLIER GROUP.

"COMPANY GROUP SYSTEMS" means Network and Information Systems which the COMPANY GROUP uses, connects to and/or relies upon, including Network and Information Systems which are used by the SUPPLIER in connection with the WORK or which may be affected by the WORK.

"COMPANY REPRESENTATIVE" means employee, officer or representative of the COMPANY, specified who manages the GOODS and/or SERVICES on behalf of the COMPANY.

"CONDITIONS" means these general terms and conditions as amended from time to time in accordance with Clause 44.

"CONFIDENTIAL INFORMATION" means any and all information (whether oral or visual or recorded in writing or electronically or any other medium) including information relating to the COMPANY GROUP'S operations, processes, plans, intentions, product information, know-how, design rights, trade secrets, market opportunities or business affairs disclosed to or acquired by the SUPPLIER in connection with the ORDER, whether or not the same was so disclosed or acquired before, on or after the date of the ORDER.

"CONSEQUENTIAL LOSS" means:

- (a) consequential or indirect loss under English law: and/or
- (b) loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in (a) above and whether or not foreseeable at the date hereof.

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“CUSTOMER” means an individual or business that purchases products from the COMPANY.

“CUSTOMER REPRESENTATIVE” means any personnel utilised by the CUSTOMER in connection with the purchase of products from the COMPANY.

“DELIVERY” shall mean the point in time when delivery of GOODS and/or SERVICES has been completed in accordance with Clause 5.

“DELIVERY ADDRESS” means the address stated on the ORDER FORM for delivery of the GOODS and/or SERVICES;

“EU SUPPLIER” means a SUPPLIER who provides GOODS and/or Services from a country within the EUROPEAN UNION

“EUROPEAN UNION” means an economic and political union of 27 countries which operates a single market. The 27 countries are Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

“FORCE MAJEURE” means the occurrence of any act or event, which is unforeseeable, insurmountable and outside the control of the PARTY which invokes it, and which renders said PARTY unable to comply totally or partially with its obligations under the ORDER. Without prejudice to the generality of the foregoing FORCE MAJEURE includes acts of god (including epidemic, pandemic, tidal wave, lighting, earthquake, hurricane) hostilities or acts of war (whether declared or not) riots (other than among employees of the SUPPLIER), civil or military disturbances, national or regional strikes (excluding strikes, lockouts and other industrial disputes or actions by, between or originated among employees of the SUPPLIER) and acts of any government or public authority or any representatives thereof whether or not legally valid. FORCE MAJEURE does not include events such as the insolvency of any PARTY.

“FOREGROUND IP” means any INTELLECTUAL PROPERTY RIGHTS created by or on behalf of the SUPPLIER in the course of the performance of its obligations or exercise of rights under the ORDER.

“GOOD INDUSTRY PRACTISE” means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgement and the making of any expenditure that would reasonable be expected from a skilled person in the same type of undertaking in the same or similar circumstances.

“GOODS” means, if applicable any goods, materials, supplies and items of equipment (including all manuals, operating instructions, specifications, certification documentation, reports and drawings to be supplied by the SUPPLIER in connection therewith) to be supplied by the SUPPLIER under this ORDER as detailed in the ORDER FORM.

“INTELLECTUAL PROPERTY RIGHTS” means intellectual including all inventions,(whether patentable or not), design rights, database rights, copyright, semiconductor topography rights, unregistered trade and service marks, logos, get up and trade names and, in each case, the goodwill attaching to them, all patents, utility models, registered designs, registered copyrights, registered trade and service marks, domain names and any applications for registration and rights to grant of the foregoing, confidential information, know how , and any rights or forms of protection of a similar nature and having equivalent or similar effect to any of them which subsist anywhere in the world.

“NETWORK AND INFORMATION SYSTEMS” has the meaning set out in NIS.

“NIS” means the Network and Information Systems Regulations 2018.

“NIS INCIDENT” means any event having an actual or potential adverse effect on the security of the WORK or any COMPANY GROUP SYSTEM.

“NIS INCIDENT PARTICULARS” means:

- (a) the COMPANY GROUP SYSTEMS which are or may be impacted;
- (b) the number of users which may be affected by the NIS INCIDENT;
- (c) the time the NIS INCIDENT occurred and the duration of the NIS INCIDENT;
- (d) the geographical area affected by the NIS INCIDENT;
- (e) the nature, including the circumstances and causes, and impact of the NIS INCIDENT;
- (f) information concerning any, or any likely cross-border impact of the NIS INCIDENT; and
- (g) the measures taken or proposed to be taken in relation to the NIS INCIDENT.

“NON-EU SUPPLIER” means a SUPPLIER who provides GOODS and/or Services from a country outside of the EUROPEAN UNION.

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“ORDER” means the contract between the COMPANY and the SUPPLIER for the WORK consisting of the ORDER FORM these Conditions, any other documents (or part of them) attached, referenced or specified in the ORDER FORM (including, for the avoidance of doubt, any variations under Clause 14. hereof) but excluding the SUPPLIER terms and conditions.

“ORDER FORM” means the form supplied by the COMPANY containing an order number and detailing the WORK

“PARTY” means the COMPANY and/or SUPPLIER as the case may be and **“PARTIES”** shall mean the COMPANY and the SUPPLIER.

“PERSON” means any individual, company, firm, partnership, association or body corporate.

“PERSONNEL” means the directors, officers, employees, agents, SUB-CONTRACTOR and/or partners of the SUPPLIER or COMPANY (as applicable).

“PRICE” means the aggregate of all sums payable under the ORDER calculated in accordance with the rates and prices set out in the ORDER (or as agreed between the Parties as the result of a variation pursuant to Clause 14. hereof), such rates and prices are fixed and firm and not subject to escalation (notwithstanding any increased material, labour or transport costs, fluctuation rates of exchange or otherwise).

“PURCHASER GROUP” means the COMPANY, its SUB-CONTRACTORS, its and their AFFILIATES, and its and their respective directors, officers and employees (including agency personnel) but shall not include any member of the SUPPLIER GROUP.

“SERVICES” means, if applicable, all and any part of any works and services required to be performed by the SUPPLIER under the ORDER as detailed in the ORDER FORM.

“SITE” means the lands, waters and other places on, under, in and through which SERVICES are to be performed including design offices, workshops and places where equipment, material or supplies are being obtained, stored or used for the purposed of the ORDER.

“SUB-CONTRACTOR” means any PERSON to whom the CONTRACTOR has subcontracted directly or indirectly at any level the provision of GOODS and/or the performance of SERVICES, or any part thereof.

“SUPPLIER” means the PERSON designated in the ORDER FORM as supplier from whom the COMPANY purchases the WORK.

“SUPPLIER GROUP” means the SUPPLIER, its SUB-CONTRACTORS, its and their AFFILIATES, and its and their respective directors, officers and employees (including agency personnel) but shall not include any member of the PURCHASER GROUP.

“SUPPLIER REPRESENTATIVE” means employee, officer or representative of the SUPPLIER, specified who manages the GOODS and/or SERVICES on behalf of the SUPPLIER.

“SUPPLIER CODE OF CONDUCT” means the COMPANY’S supplier code of conduct, a copy of which is available on request.

“THIRD PARTY” means any PERSON that is not a member of the COMPANY GROUP or the CONTRACTOR GROUP.

“WORK” means the supply of GOODS and/or performance of SERVICES as the case may be.

1.2. INTERPRETATION

- (a) The terms’ **“fault”, “breach”, “failure”, “default”, “deficiency”** and the like shall be understood as any failure whatsoever to comply with the ORDER requirements, whether
- (b) In the event of conflict, the provision of any special conditions set out in the ORDER FORM shall prevail over these CONDITIONS.
- (c) All headings in the ORDER are used for convenience by act, omission, negligence, mis performance, non-performance or late performance only and shall not affect the construction or validity of the ORDER.

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- (d) Any reference herein to a Clause or Subclause shall, unless expressly stated otherwise, be construed as a reference to the relevant recital, clause or subclause of these CONDITIONS.
- (e) Reference to any statute statutory provision or statutory instrument includes a reference to statute, statutory provision or statutory instrument as amended, extended or re-enacted from time to time.
- (f) Reference to the singular includes a reference to the plural and vice versa. Reference to persons shall include companies and firms and vice versa. Reference to any gender includes a reference to the other genders.
- (g) "including" shall be construed to mean "including but not limited to".

2. BASIS OF CONTRACT

- 2.1. The ORDER constitutes an offer by the COMPANY, acting on behalf of the COMPANY to purchase GOODS and/or SERVICE 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 unqualified written acceptance of the ORDER or
 - (b) any act by the Supplier consistent with fulfilling the ORDER,at which point the ORDER shall come into existence.

3. CARRYING OUT THE WORK

The SUPPLIER shall perform the WORK in accordance with the ORDER. The SUPPLIER warrants and represents to the COMPANY that it is fully experienced and technically competent to perform the WORK and that it is properly financed, organised and equipped to perform the WORK.

4. STANDARDS OF PERFORMANCE**4.1. GOODS**

- 4.1.1. The SUPPLIER warrants and undertakes to the COMPANY that GOODS shall:
 - (a) conform in all respects with the ORDER FORM description and specification supplied or advised by the COMPANY to the SUPPLIER, and with any statements or undertakings, representations or warranties whether written by the SUPPLIER or SUPPLIER GROUP and accepted by the COMPANY prior to the placement of the ORDER upon which the COMPANY has reasonably relied upon.
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose and use the best quality goods, materials, standards and techniques held out by the SUPPLIER or made known to the SUPPLIER by the COMPANY expressly or by implication, and in this respect the COMPANY relies on the SUPPLIER'S skill and judgement, and any statements and representations made by the SUPPLIER and ensure that the documents, products and materials developed by the SUPPLIER or SUPPLIER GROUP as part of or in relation to the GOODS in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts)
 - (c) be free from defects in design, material and workmanship;
 - (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of GOODS.

4.2. SERVICES

- 4.2.1. The SUPPLIER shall carry out SERVICES in a professional manner, exercising all reasonable skill, care, diligence and good judgement in the performance thereof and shall complete SERVICES in accordance with best operation and maintenance practice and best standards of workmanship expected of a reputable SUPPLIER

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experienced in the SERVICES to be performed. The SUPPLIER warrants and represents to the COMPANY that the SERVICES shall be free from any omissions, errors, defects, failures or otherwise unacceptable performance or results therefrom.

5. DELIVERY

5.1. GOODS

5.1.1. Time is of the essence in respect of DELIVERY of GOODS. The SUPPLIER shall deliver GOODS:

- (a) no earlier than 3 calendar days prior to and no later than the time specified in the ORDER FORM, or, if no such date or period is specified or the COMPANY otherwise directs, such date as the COMPANY may agree in writing;
- (b) to the DELIVERY ADDRESS set out in the ORDER, or as instructed by the COMPANY prior to delivery;
- (c) during the COMPANY'S normal business hours, or as instructed by the COMPANY.
- (d) not as multiple deliveries without prior written consent of the COMPANY.
- (e) in accordance with any SUPPLIER packaging specification agreed by the COMPANY to the SUPPLIER, clearly and legibly labelled, addressed and marked with the Date of the Order, the ORDER FORM number (if any), the type and quantity of the GOODS, any special storage instructions and any outstanding balance (if applicable) of GOODS remaining to be delivered and stating whether the SUPPLIER requires the COMPANY to return any packaging material (in each case only to be returned to the SUPPLIER at the cost of the SUPPLIER) and in accordance with any applicable statute, regulations or requirements of the carrier, and properly and securely packed to survive transit to the COMPANY'S works, or such other destination as the COMPANY shall nominate in the ORDER FORM and to resist pilferage, destruction, corrosion and contamination so as to reach their destination in an undamaged condition in the ordinary course.
- (f) All hazardous GOODS shall be marked with appropriate international danger symbols and the description of the GOODS clearly shown in English. The SUPPLIER shall observe all United Kingdom and international agreements and regulations relating to packing, labelling and carriage of hazardous GOODS

5.1.2. If the GOODS are not delivered as referred to in clause 5.1.1 (a), the COMPANY shall have the right to any one or more of the following remedies:

- (g) to terminate the ORDER;
- (h) to refuse to accept any subsequent delivery of GOODS which the SUPPLIER attempts to make;
- (i) to recover from the SUPPLIER any costs in excess of the PRICE incurred by the COMPANY in obtaining substitute goods from a third party; and
- (j) to claim damages for any other costs, loss or expenses incurred by the COMPANY which are in any way attributable to the SUPPLIER'S failure to deliver GOODS on the due date.
- (k) deduct by way of liquidated damages from the PRICE or (if the COMPANY has agreed to pay any part of the PRICE in advance of delivery) for delay, two (2) percent of the PRICE for every week's delay, up to a maximum of ten (10) per cent of the PRICE.

5.1.3. The SUPPLIER shall ensure that:

- (l) GOODS are marked in accordance with the COMPANY'S instructions and any applicable regulations or requirements of the carrier, and properly packed and secured in such manner as to enable them to reach their destination in an undamaged condition; and
- (m) each delivery of GOODS is accompanied by a delivery note which shows the ORDER number specified on the ORDER FROM, special storage instructions (if any) and, if the GOODS are being delivered by instalments, the outstanding balance of GOODS remaining to be delivered.

5.1.4. Delivery of GOODS shall be completed on the completion of unloading the GOODS at the DELIVERY ADDRESS set out in the ORDER. GOODS shall be delivered to the COMPANY and packaged to protect from damage in transit and subject to Incoterms 2020, Delivered Duty Paid (DDP) provided that in the event of any conflict between an express provision of these CONDITIONS and such Incoterm, the express provision of these CONDITIONS shall prevail.

5.1.5. If GOODS are to be delivered by instalments as agreed by the COMPANY, the ORDER shall be treated as a single contract and not severable.

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- 5.1.6. The COMPANY shall not be obliged to return to the SUPPLIER any packaging or packing materials for the GOODS whether or not the GOODS are accepted by the COMPANY. The COMPANY shall request an annual credit for the cost of the disposal all packaging and packing materials. Upon receipt of the credit the SUPPLIER shall have a period of thirty (30) days to credit the COMPANY.
- 5.1.7. If the COMPANY defers date or dates for deliveries by notice in writing, the SUPPLIER shall keep the GOODS adequately stored, protected maintained and insured at their full replacement value at all times.

5.2. SERVICES

The SUPPLIER shall meet any performance dates for SERVICES specified in the ORDER FORM or notified to the SUPPLIER by the COMPANY.

6. STATEMENT OF QUALITY ASSURANCE REQUIREMENTS, INSPECTION AND ACCEPTANCE

- 6.1. The SUPPLIER shall complete any Quality Assurance check-off lists forwarded as required by the COMPANY.
- 6.2. The COMPANY, its CUSTOMER or its CUSTOMER'S REPRESENTATIVE shall be entitled to inspect, test and review the WORK (or any part thereof) and the SUPPLIER shall provide the COMPANY with unrestricted access to its facilities and works and that of any SUB-CONTRACTOR to carry out such inspection, testing and review. The COMPANY shall inform the SUPPLIER if it discovers that the WORK (or any part thereof) does not comply or is unlikely to comply with the requirements of the ORDER and the SUPPLIER shall immediately take whatever remedial action is necessary to ensure compliance. Any inspection, testing or review by the COMPANY or COMPANY'S PERSONNEL or any failure to inspect, test or review shall in no way relieve the SUPPLIER of its obligations under the ORDER. The SUPPLIER and the COMPANY and their respective PERSONNEL shall have the right to conduct further inspections tests or reviews after the SUPPLIER has carried out its remedial actions.
- 6.3. The SUPPLIER shall give the COMPANY fourteen (14) days' clear notice of items being available for inspection and/or tests and permit the PURCHASER'S GROUP to carry out such inspection and witness such tests as the COMPANY shall deem appropriate.
- 6.4. The SUPPLIER shall provide the COMPANY with Certificate(s) of Inspection, Tests and Conformity confirming that the GOODS for conform to the COMPANY'S ORDER requirements.
- 6.5. The COMPANY shall not be deemed to have accepted the GOODS and/or SERVICES until it has had seven (7) days to inspect them following delivery, provision or collections as the case may be.
- 6.6. The COMPANY shall be entitled to reject any GOODS which are Delivered or SERVICES which are performed as though they had not been accepted for a period of one hundred and eighty (180) days after any latent defects or failure to meet the requirements of the ORDER become apparent.
- 6.7. If the COMPANY rejects any WORK pursuant to clause 6.6 the COMPANY shall be entitled, without prejudice to any other rights and remedies which it may have, to have:
- (a) rejected GOODS repaired, or SERVICES re-performed, forthwith by the SUPPLIER;
 - (b) rejected GOODS replaced by the SUPPLIER with GOODS which comply in all respects with the requirements of the ORDER; or
 - (c) obtain a full refund from the SUPPLIER in respect of the rejected WORK.
- 6.8. Should the SUPPLIER deliver a greater quantity of GOODS and/or SERVICES than is requested for within the ORDER, the COMPANY shall be under no obligation to pay for excess quantity. If the excess quantity of GOODS and/or SERVICES is not recovered by the SUPPLIER at their expense within 7 days of notification by the COMPANY the matter will be dealt with in accordance with the Sale of Goods Act 1979 and any additions and amendments thereto.
- 6.9. The COMPANY shall approve any requested concessions and/or deviations in regard to GOODS which do not meet the specified requirements before such materials are delivered to the COMPANY's site. Each concession and/or deviation to be agreed on a case by case basis.

7. DEFECTS/QUALITY CORRECTION

7.1. In the event that the COMPANY determines that the WORK is not in accordance with the requirements of the ORDER or has a defect or deficiency or is in some other manner unsatisfactory and so notifies the SUPPLIER in writing:

- (a) for GOODS (or any part thereof) within twelve (12) months from the date the GOODS are first put into operational use or twenty-four (24) months from DELIVERY, whichever shall first occur;
- (b) for SERVICES, within twelve (12) months from the date of completion and acceptance of the SERVICES by the COMPANY;

then, without prejudice to the rights of the COMPANY at law including any statutory limitation periods during which the COMPANY may bring a claim, the SUPPLIER shall, subject to the operational requirements of the COMPANY and to the provisions of Clause 7.3, promptly carry out all works necessary to rectify, or at COMPANY'S option, replace or re-perform, the WORK to ensure that it complies with the requirements of the ORDER, in all cases to the COMPANY'S reasonable satisfaction.

7.2. The obligations set out in Clause 7.2 shall apply again to all WORK which is rectified or replaced in accordance with this Clause 7 for a like period being:

- (a) for GOODS twelve (12) months from the date the rectified or replaced GOODS are put into operational use or twenty-four (24) months from the time the rectification works is completed to the COMPANY'S satisfaction or replacement GOODS are DELIVERED, whichever shall first occur, and;
- (b) for SERVICES, twelve (12) months from the date of completion and acceptance of the replaced or re-performed SERVICES by the COMPANY;

7.3. If the WORK is not rectified, replaced or re-performed in accordance with Clause 7.1 within such reasonable time as the COMPANY shall determine, taking account of the COMPANY'S operational requirements, then the COMPANY shall be entitled to carry out such rectification works itself, have it carried out by others or obtain replacement WORK, and recover from the SUPPLIER all costs reasonably incurred by the COMPANY in doing so.

7.4. Subject to condition 8.3, if any of the GOODS do not conform with any of the warranties in condition 8.2 the SUPPLIER shall at its option repair or replace such GOODS (or the defective part) or refund the price of such GOODS at the pro rata ORDER rate provided that, if the SUPPLIER so requests, the COMPANY shall return the GOODS or the part of such GOODS which is defective to the SUPPLIER. All costs associated with returning the GOODS to the SUPPLIER for replacement and the return of such to the COMPANY or CUSTOMER, or for the repair of the GOODS at the COMPANY or CUSTOMER'S site shall be at the SUPPLIER'S expense.

7.5. Where any GOODS supplied under the ORDER require further processing by the COMPANY and before their ultimate use prove to be defective whilst in the course of or after completion of such further processing, the SUPPLIER shall be liable to the COMPANY for the cost of any labour expended, material wasted or recovery of a customer stop situation (including but not limited to any removal, re-installation, strip-down, re-assembly, testing, transportation and inspection costs) in connection with such further processing shall be at the SUPPLIER'S expense. The level of additional contribution will be agreed on a case by case basis

7.6. In the event that GOODS which are on loan or hire to the COMPANY arrive or become defective during the course of the loan or hire, the COMPANY shall not, under any circumstances, be liable for any repair, replacement or delivery costs, in connection with making good the defective GOODS. On notification to the SUPPLIER that the GOODS are defective the COMPANY will not be liable for any agreed loan or hire charges that may become due until such time as the defective GOODS are replaced or made good whereupon the agreed loan or hire period will recommence.

7.7. All costs of rectification WORKS for SERVICES (including any removal, re-installation, testing, transportation and inspection costs) shall be at the SUPPLIER'S expense.

7.8. Subject to condition 7.4. if GOODS do not conform the COMPANY shall request within twenty (24) months from delivery or within twelve (12) months from being placed into operational use, a credit for the cost of the non-conforming GOODS from the SUPPLIER. Upon receipt of a credit request the SUPPLIER shall have a period of thirty (30) days to credit the COMPANY and inform the COMPANY of whether the non-conforming GOODS shall be collected by the SUPPLIER or authorisation is provided to the COMPANY to enable the non-conforming GOODS to be scrapped. Failure to provide the requested credit will result in the COMPANY offsetting the credit against amounts owed to the SUPPLIER.

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- 7.9. Subject to condition 7.8 if the non-conforming GOODS are to be collected the SUPPLIER shall have 7 days from notification of the collection, failure to collect within the 7 days shall result in the COMPANY scrapping the non-conforming GOODS.
- 7.10. If GOODS are free-issued to the SUPPLIER to enable further processing on a sub-contracted basis, any costs associated with quality failure by the SUPPLIER shall be recovered. The level of cost will be agreed on a case by case basis.
- 7.11. The SUPPLIER shall incur an administrative cost of £150 per part number for all non-conforming or poor quality items.

8. WARRANTY

- 8.1. Where the SUPPLIER is not the manufacturer of the GOODS and/or SERVICES, the SUPPLIER shall transfer to the COMPANY the benefit of any warranty or guarantee.
- 8.2. Unless otherwise stated on the ORDER the SUPPLIER warrants that (subject to the other provisions of these conditions) upon delivery the GOODS and/or SERVICES and all deliverables are as referred to in Clause 4.
- 8.3. The SUPPLIER shall not be liable for a breach of any of the warranties in condition 8.2 if the defect arises because the COMPANY failed to follow the SUPPLIER'S written instructions as to the storage, installation, commissioning, use or maintenance of the GOODS and/or SERVICES or (if there are none) good trade practice.

9. PROGRESS REPORTS

Unless otherwise agreed in writing, the SUPPLIER shall provide within 7 days of receipt of the ORDER for the provision of GOODS a draft schedule giving the cardinal dates in the procurement and manufacturing programme upon which the stated delivery period depends. The SUPPLIER shall review, and report achieved progress at the end of each month and report actual or threatened delays with details of the proposed recovery action. The provision of such information in no way relieves the SUPPLIER of the responsibility for maintaining the agreed delivery date of the GOODS.

10. DRAWINGS

All parts made to drawings supplied or funded by the COMPANY are to be deemed to be the COMPANY'S design and the drawings shall not under any circumstances be supplied to any THIRD PARTY nor shall they be used for the production of any article that is not the subject of an ORDER from the COMPANY.

11. INCLUSIONS IN CONTRACT

Unless otherwise stated the ORDER includes the supply of all plant, equipment and materials, labour, transportation and handling and all other items of whatever type and nature necessary for the proper execution of the WORK.

12. OBTAINING AUTHORISATIONS

- 12.1. The SUPPLIER shall be responsible for obtaining and maintaining at its own cost all licences, visas, permits, clearances, certifications, governmental or administrative authorisations necessary for performance of its obligations hereunder unless expressly stated elsewhere in the ORDER as being obtained by the COMPANY. At the request of the COMPANY, the SUPPLIER shall produce all relevant documents and certificates. Neither the COMPANY shall have any liability whatsoever in respect of obtaining and maintaining such licences, visas, permits, clearances, certifications, governmental or administrative authorisations. However, should it be necessary for the SUPPLIER'S applications, the COMPANY shall provide such certifications as they are empowered to issue, it being understood that the SUPPLIER shall remain liable to inform the COMPANY (as the case may be) with sufficient advance notice of such requirement.

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- 12.2. The COMPANY shall have no obligation to procure, or to assist in the procurement, or to bear any cost or expense relating to entry visa, way leave permits, resident and work permits and any applicable licence for the SUPPLIER'S employees or personnel.

13. AWARENESS OF CONDITIONS OF SERVICES

The SUPPLIER warrants and represents that prior to entering into the ORDER it has fully acquainted itself as to all local, regional, national and SITE conditions which could affect the performance of SERVICES and/or the SUPPLIER'S obligations under the ORDER.

14. VARIATIONS

- 14.1. The COMPANY has the right to issue instructions to the SUPPLIER at any time to make variations to the WORK which are within the resource and capability of the SUPPLIER. No variation shall be binding on the COMPANY unless signed in writing by an authorised signatory of the COMPANY. The SUPPLIER shall proceed immediately as instructed.
- 14.2. Any adjustment to the PRICE resulting from any variation shall be valued at the appropriate rates and prices set out in the ORDER or, in the absence of any appropriate rates and prices a fair valuation shall be made, and the adjustment shall be agreed in writing by the PARTIES.
- 14.3. Variations shall be in writing and shall be delivered to the other PARTY personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, for may be sent by email to a COMPANY or SUPPLIER REPRESENTATIVE as provided by the either PARTY.
- 14.4. Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email, at the time of sending (provided no notification of failed delivery is received by the COMPANY). This Clause 14 shall not apply to the service of any proceedings or other documents in any legal action.

15. HEALTH, SAFETY AND ENVIRONMENT AND BUSINESS ETHICS

- 15.1. Where the SUPPLIER is performing SERVICES at a SITE (other than a SITE operated by the SUPPLIER), the SUPPLIER shall strictly observe the COMPANY'S health, safety and environmental policies and requirements, (and the health, safety and environmental policies and requirements of their respective suppliers or such other SITE owners as may be applicable) relating to the SERVICES and ensure that the SUPPLIER'S employees and personal are trained as a minimum to those standards by the COMPANY, or its respective suppliers or other relevant SITE owner. Copies of the COMPANY'S health, safety and environmental policy (or the policies and requirements of the COMPANY'S suppliers or such other SITE owners as may be applicable), are available for inspection upon written request.
- 15.2. The SUPPLIER and the SUPPLIER GROUP agrees to comply with the COMPANY'S SUPPLIER CODE OF CONDUCT and fully accepts that the observance by it of the COMPANY'S SUPPLIER CODE OF CONDUCT when doing business with the COMPANY is a condition for the COMPANY and the SUPPLIER commits therefore not to violate any of the COMPANY'S SUPPLIER CODE OF CONDUCT when performing work in connection with the ORDER.
- 15.3. Generally, and without prejudice to any higher standard which is applicable, the SUPPLIER agrees to comply the COMPANY'S health, safety and environmental policies and requirements.

16. SUPPLIER'S PERSONNEL

- 16.1. The SUPPLIER shall ensure that all employees and personnel of the SUPPLIER and any SUB-CONTRACTOR engaged in the performance of SERVICES are fully skilled, competent and experienced in their respective fields to properly perform the SERVICES in accordance with the requirements of the ORDER.

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- 16.2. The SUPPLIER shall be responsible for providing the SUPPLIER'S employees and personnel with suitable protective/safety clothing and equipment and all tools and materials required for the SERVICES (unless otherwise expressly provided within the ORDER).

17. SITE REQUIREMENTS

This Clause applies where a SITE is not operated by the SUPPLIER or SUB-CONTRACTOR.

17.1. Access to Site

Subject to compliance with APPLICABLE LAWS and the COMPANY'S regulations and procedures, the COMPANY shall allow the SUPPLIER and SUB-CONTRACTORS access to SITE on a non-exclusive basis to the extent reasonably required for the performance of the SUPPLIER'S obligations, subject to any restrictions or constraints on such access within the ORDER or otherwise made known to the SUPPLIER by the COMPANY.

17.2. Co-operation on SITE

The SUPPLIER shall co-operate with the COMPANY and all other suppliers working at the SITE so that all operations at the SITE may be carried out in the safest and then most convenient and efficient way and shall take all measures to avoid or reduce to a minimum any inconvenience to other companies involved in such operations and the THIRD PARTIES. The constraints and obligations resulting from such circumstances shall be deemed to be included in the PRICE and in the SUPPLIER'S time schedule for the performance of the WORK. Should the COMPANY require, beyond such constraints and obligations and without any fault of the SUPPLIER, that the SERVICES be held up to facilitate other works, then the provisions of Clause 5.2 shall apply.

17.3. Protection of property on SITE

The SUPPLIER shall protect from possible damage resulting from the SUPPLIER'S operations any existing facility, equipment, materials (whether stored or installed) and /or other item on SITE belonging to any member of the COMPANY GROUP, or any supplier of a member of the COMPANY GROUP and/or any THIRD PARTY.

18. SUPPLIER'S REPRESENTATIVE ON SITE

- 18.1. The SUPPLIER shall, if required by the COMPANY, provide on those sites owned or occupied by any member of the COMPANY GROUP (or their suppliers or any relevant THIRD PARTY), such representatives as the COMPANY shall reasonably require at such times and for such periods in order to give expert technical assistance, guidance and advice during the storage, testing, installation, pre-commissioning and/or commissioning of the WORK.
- 18.2. The SUPPLIER notwithstanding its other obligations under the ORDER, shall ensure that its representatives attending such sites, shall comply with Clause 17.

19. LIENS

The SUPPLIER waives any right of lien against GOODS. The SUPPLIER shall not at any time suffer or permit any lien, attachment or encumbrance to be imposed by any individual, firm or company upon GOODS (or any part thereof) by reason of a claim or demand against the SUPPLIER.

20. PRICE

- 20.1. In full consideration of the proper and complete supply and/or performance of the WORK, the COMPANY shall pay the SUPPLIER the PRICE.
- 20.2. Unless otherwise stated in the ORDER all amounts payable by the COMPANY under the ORDER are:
- (a) exclusive of amounts in respect of UK value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the ORDER by the SUPPLIER to the COMPANY, the COMPANY shall, on receipt of a valid VAT invoice from the SUPPLIER, pay the SUPPLIER such additional amounts in respect of VAT, as are chargeable on the supply of the GOODS and/or SERVICES at the same time as payment is due for the supply of the GOODS and/or SERVICES; and

- (b) inclusive of all charges for the packaging, shipping, carriage, insurance and delivery of the GOODS and/or SERVICES and any duties, imposts or levies, other than VAT.

20.3. The COMPANY shall be entitled to any discount (including prompt payment, bulk purchase or volume of purchase discounts) customarily granted by the SUPPLIER.

21. INVOICING AND PAYMENT

21.1. Invoicing

Payment of an invoice substantiated to the reasonable satisfaction of the COMPANY will be made by the COMPANY within 60 days end of the month of receipt of a valid and accurate invoice (including any VAT where applicable). Upon completion of the WORK (or relevant part thereof, if applicable) to the satisfaction of the COMPANY (which shall include all testing and the provision of all required reports and documentation in a form satisfactory to the COMPANY), the SUPPLIER shall invoice the COMPANY at the address specified in the ORDER FORM for the PRICE (or relevant part thereof if applicable). Each invoice shall specify the invoice date (provided that such date shall in no circumstances pre-date the completion of the WORK to the satisfaction of the COMPANY (or relevant part thereof, if applicable) and shall include such supporting information required by the COMPANY to verify the accuracy of the invoice, including but not limited to relevant ORDER FORM number, Company Name, Address, Contact Details, VAT Number, Company Registration Number, EORI Number and shall be accompanied by a delivery or supply notice including but not limited to Order/Shipment Information, Delivery Details, Package Weight and Dimensions, Incoterm Rule, Country of Origin by Item, Commodity Code by Item, Product Information, or a supply notice including but not limited to Hours Worked, Days Worked, duly authorised by the COMPANY. Payment by the COMPANY in accordance herewith shall not constitute any admission by the COMPANY as to the performance by the SUPPLIER of their obligations.

21.2. Dispute Invoices

If the COMPANY disputes an invoice, the COMPANY shall notify the SUPPLIER of the amount(s) under dispute and the SUPPLIER shall have the option to submit a corresponding credit note, nearing the reference and details of the original invoice, within five (5) days of receipt of such notification or should the SUPPLIER fail to issue a credit note after five (5) days of receipt of such notification the COMPANY return the disputed invoice to the SUPPLIER specifying in writing the terms to which the COMPANY objects and the reasons for such objections. The SUPPLIER shall resubmit to the COMPANY a revised invoice taking into account the objections of the COMPANY, or shall promptly establish and re-submit to the COMPANY two separate invoices, one in respect of the undisputed part of the original invoice and the other in respect of the revised part of the original invoice. If the revised invoice is disputed wholly or in part, the forgoing procedure shall be repeated until the PARTIES have reached an agreement.

Where completion of SERVICES has been disputed or rejected the COMPANY and the SUPPLIER shall endeavour to resolve the disputed issues within a reasonable time.

21.3. Terms of Payment

21.3.1. The COMPANY shall pay the SUPPLIER undisputed invoice within sixty (60) days end of the month of receipt of a valid and accurate invoice (including any VAT where applicable) to such bank accounts as the SUPPLIER shall designate on such invoice. This payment shall be made subject to APPLICABLE LAW. Payment shall be deemed made as of the date of transfer from the COMPANY'S bank.

21.3.2. If the COMPANY fails to pay a fully compliant and correct invoice within sixty (60) days end of the month of receipt, the SUPPLIER may exercise its right to recover interest for late payment at a rate of no more than three percent (3%) above the Bank of England Base Rate from the original due date of invoice. Such interest shall be calculated pro-rata until the original invoice is paid, however any such interest claimed by the SUPPLIER must be invoice separately, and within then (10) days of the payment of the original invoice to which the interest relates.

21.3.3. The SUPPLIER shall not be entitled to receive payment on any invoice received by the COMPANY more than ninety (90) days after completion of WORK, Nevertheless the COMPANY may at its sole discretion, make payment against any such invoice.

21.3.4. Payments made by the COMPANY shall not be construed as waiver of the COMPANY'S right to object to any paid invoice.

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21.4. Set Off

Any amounts payable by the COMPANY hereunder may be withheld and/or set off by the COMPANY in whole or in part by reason of any actual or anticipated claims by the COMPANY against the SUPPLIER arising under the ORDER or any other contract between the COMPANY and the SUPPLIER without limiting the COMPANY'S other rights or remedies under the ORDER.

22. TAXES

22.1. The SUPPLIER shall pay all taxes, duties, levies, charges and contribution (including national insurance and social security benefits) assessed against it in connection with the WORK and shall defend, indemnify and hold the COMPANY GROUP harmless from and against CLAIMS:

- (a) in respect of any such taxation, duties, levies, charges and contributions (including fine, penalties and interest) assessed on the SUPPLIER GROUP, or any other party connected with the SUPPLIER or;
- (b) which might have been assessed or assessable as aforesaid but for any member of the COMPANY GROUP having been first required to make such payment.

22.2. The SUPPLIER shall defend, indemnify, and hold the COMPANY GROUP harmless from and against any assessment made on any member of the COMPANY GROUP as a result of the failure by the SUPPLIER or any member of the SUPPLIER GROUP to withhold income tax from any of its employees or any other party related to the SUPPLIER. Furthermore, the SUPPLIER shall comply with the requirements of the Finance Act 2004 Chapter 3 and the regulations made thereunder (known as the "Construction Industry Scheme") and any amendment thereto.

22.3. If any member of the COMPANY GROUP receives a notice requiring it to pay any taxes, levies, charges or contributions of the types referred to in this Clause, and/or any interest or penalty thereon, on presentation of evidence of such liability the SUPPLIER shall within fourteen (14) days or two (2) days before such liability is due (whichever is the later) pay the COMPANY (on behalf of the relevant member of the COMPANY GROUP) such sum or the COMPANY shall be entitled to deduct such sums from any monies due, or which may become due to the SUPPLIER hereunder.

22.4. Upon request by the COMPANY, the SUPPLIER will prompt supply to the COMPANY such information as is necessary to enable the COMPANY to comply with the lawful demands for such information by any government authority.

22.5. The provisions of this Clause shall survive termination or expiration of the ORDER.

23. AUDIT AND STORAGE OF DOCUMENTS

23.1. The SUPPLIER shall safely keep and cause SUBCONTRACTORS to keep accurate detailed records and accounts pertaining to the WORK, including personnel records, correspondence, vouchers, memoranda, computerised data, time spent, materials used and such other information necessary for an accurate audit, for the duration of the ORDER and for a period of six (6) years following the date the WORK has been performed and completed in accordance with the requirements of the ORDER or termination of the ORDER.

23.2. The COMPANY shall each have the right during the period specified in Clause 23.1 to audit (or have audited) and to copy any record and account relating to;

- (a) the verification of any sum paid or payable under the ORDERS; and
- (b) any provision of this ORDER under which the SUPPLIER has obligations the performance of which is capable of being verified by audit.

in this respect the COMPANY shall not be entitled to investigate make up of rates and lump sums included in the ORDER except to the extent necessary for the proper evaluation of any variations arising under Clause 14.

23.3. The SUPPLIER shall cooperate with the COMPANY and provide such assistance as they may reasonably require in connection with such audit.

23.4. In the case of termination of the ORDER under the provisions of Clause 34 or suspension under Clause 35, such right shall extend to any documentation related to costs to be reimbursed by the COMPANY to the SUPPLIER following such termination.

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- 23.5. If as a result of any review or audit it is established that any invoice submitted under the ORDER is erroneous the SUPPLIER shall promptly adjust such error and send to the COMPANY, the corresponding credit note or repay any over payment.
- 23.6. In addition to the foregoing rights of the COMPANY and within the same limits, the COMPANY shall have the right to audit the SUBCONTRACTORS in respect of the WORK. The COMPANY shall determine the selection of SUBCONTRACTORS to be inspected and audited. The SUPPLIER shall ensure that the foregoing provisions are included in all contracts to be entered into with SUBCONTRACTORS.

24. LIABILITIES

24.1. Liabilities between the PARTIES

24.1.1. The SUPPLIER shall be responsible for and shall, save indemnify, defend and hold harmless the COMPANY GROUP from and against all CLAIMS in respect of:

- (a) loss or damage to property of the SUPPLIER GROUP whether owned, hired or leased or otherwise provided by the SUPPLIER GROUP, arising from, relating to or in connection with the performance or non-performance of the ORDER; and
- (b) personal injury including death or disease to any person employed by the SUPPLIER GROUP arising from, relating to or in connection with the performance or non-performance of the ORDER; and
- (c) subject to any other express provisions of the ORDER, personal injury including death or disease or loss of or damage to the property of any THIRD PARTY to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the SUPPLIER GROUP or any member thereof.

24.1.2. The COMPANY shall be responsible for and shall, save, indemnify, defend and hold harmless the SUPPLIER GROUP from and against all CLAIMS in respect of:

- (a) loss of or damage to property of the COMPANY GROUP whether:
 - i. owned by the COMPANY GROUP; or
 - ii. leased or otherwise obtained under arrangements with financial institutions by the COMPANY GROUP;

arising from, relating to or in connection with the performance or non-performance of the ORDER and which property, in respect of SERVICES is located at the SITE but is not within the care, custody or control of the SUPPLIER GROUP, and provided always that the provision of this Clause shall not apply to GOODS prior to DELIVERY.

- (b) personal injury including death or disease to any person employed by the COMPANY GROUP arising from, relating to or in connection with the performance or non-performance of the ORDER; and
- (c) subject to any other express provisions of the ORDER, personal injury including death or disease or loss of or damage to the property of any THIRD PARTY to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the COMPANY GROUP or any member thereof.

24.2. Consequential Losses

24.2.1. Without prejudice to any liquidated damages or other compensation provisions stipulated for delay, non-performance, mis-performance, or otherwise under the ORDER, the SUPPLIER shall save, indemnify, defend and hold harmless the COMPANY GROUP from the SUPPLIER GROUP'S own CONSEQUENTIAL LOSS arising from or relating to or in connection with the performance and non-performance of the ORDER.

24.3. Pollution

24.3.1. Except as provided by Clause 24.1.1 and Clause 24.1.2 and 24.2 the SUPPLIER shall save, indemnify, defend and hold harmless the COMPANY GROUP from and against and CLAIM arising from pollution occurring on the premises of the COMPANY GROUP or emanating from the property or equipment of the SUPPLIER GROUP (including marine vessels).

24.4. Transfer of Undertakings

24.4.1. The SUPPLIER shall be responsible for and shall, save indemnify, defend and hold harmless the COMPANY GROUP from and against all CLAIMS arising out of or in connection with the award of the ORDER and/or

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performance or non-performance of the ORDER by the SUPPLIER and based upon the application of the Transfer of Undertakings (Protection of Employment) Regulations as amended and/or supplements from time to time.

24.5. Liabilities for Intellectual Property Rights

24.5.1. The SUPPLIER shall assume all liability for and shall defend, indemnify, and hold the COMPANY GROUP harmless from and against any and all CLAIMS arising out of or connection with any alleged or actual infringement of any patent, licence, copyright or any other intellectual or industrial property right arising out of or in connection with the manufacture, supply of use of GOODS or performance of SERVICES, save only to the extent such infringement results from any data or items provided by any member of the COMPANY GROUP.

24.5.2. In the event that there is found to be an infringement as described in Clause 18)24.5.1, the SUPPLIER shall at its own cost and expense procure for the COMPANY the right to continue using any GOODS, failing which the SUPPLIER shall refund to the COMPANY the full price paid for the GOODS. The SUPPLIER shall at its own risk, cost and expense promptly uplift and remove the GOODS from the location at which the GOODS are situated or installed (which for the avoidance of doubt includes all removal and transportation costs to and from the location at which the GOODS are installed). Furthermore, the SUPPLIER shall be liable to make payment to the COMPANY for any costs (including all additional transportation, installation, inspection and testing costs) which the COMPANY may incur over and above the CONTRACT PRICE as a result of acquiring like or alternative GOODS for the COMPANY from a third party

24.6. Holding harmless

24.6.1. All exclusions, limitations and indemnities save for those under Clause 24.1.1 (c) and Clause 24.1.2 (c) given under this Clause 24.6 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified PERSON or any other PERSON and shall apply irrespective of any CLAIM in tort, under contract or otherwise at law.

24.6.2. If either PARTY becomes aware of any incident likely to give rise to a CLAIM under the above indemnities, it shall notify the other and both PARTIES shall co-operate fully in investigating the incident. The SUPPLIER shall be responsible for the defence of any suit brought against any member of the COMPANY GROUP on account of any CLAIM in respect of which the SUPPLIER is liable under the provisions of this Clause 24.6 and shall satisfy any judgement against any member of the COMPANY GROUP resulting therefrom.

24.6.3. The COMPANY shall be entitled but not obliged to participate in the defence of any suit to which it or any member of COMPANY GROUP is a party without relieving the SUPPLIER of its responsibility for the defence of the suit. The COMPANY shall forthwith, upon receiving notice of any suit brought against it or an indemnified member of the COMPANY GROUP deliver to the SUPPLIER full particulars thereof and shall render all reasonable assistance requested by the SUPPLIER in the defence of the suit. To the extent that the SUPPLIER deals with the defence of a CLAIM to which this Clause applies, the SUPPLIER shall not settle such CLAIM or make any agreement with respect to such CLAIM without the written consent of the COMPANY (which consent shall not unreasonably be withheld or delayed) and shall keep the COMPANY constantly informed of proceedings and developments in relation to such CLAIM.

24.6.4. The provisions of the above Clauses 24.6.2 and 24.6.3 shall apply conversely in case of a suit against the SUPPLIER GROUP on account of any CLAIM in respect of which the COMPANY is liable under the provisions of this Clause 24.6.

24.6.5. Whenever a PARTY is pursued in respect of any loss, damage, injury, disease or death whatsoever for which the other PARTY is liable under the provisions of this Clause, the latter shall save, indemnify, defend and hold harmless the former without delay.

24.6.6. The provisions of this Clause 24.6 shall survive termination or expiration of the ORDER.

24.6.7. All indemnities under the ORDER shall be full and primary and be fully enforceable irrespective of any separate right of indemnity or contribution.

25. INSURANCES

25.1. For the duration of the ORDER (unless otherwise specified) and for a period of twelve (12) months thereafter the SUPPLIER shall, and shall ensure that its PERSONNEL shall, procure and maintain at their own cost with a reputable insurance company adequate insurance to provide cover against all loss of and damage to property

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and injury to persons (including death) howsoever arising and against all actions claims demands, costs (including legal costs) and expenses in respect thereof. The SUPPLIER shall also maintain (and ensure that its PERSONNEL maintain) professional indemnity insurance with a limit of indemnity of not less than two million pounds (£2,000,000) or alternatively not less than the limit (if any) stated in the ORDER for any CLAIM or series or CLAIMS arising out of any one incident for a period of not less than six years from the completion of the SERVICES.

- 25.2. The SUPPLIER shall, on the COMPANY'S request produce evidence, in the form of a broker's letter that the policies of insurance required under this Clause 25 are in place. The SUPPLIER shall provide evidence of insurance within 7 days of receipt of a written request by the COMPANY.

26. INTELLECTUAL PROPERTY RIGHTS

- 26.1. Where the COMPANY has procured the whole or part of development activities then the INTELLECTUAL PROPERTY RIGHTS in that developed item shall become the property of and vest in the COMPANY and the SUPPLIER shall indemnify and hold harmless the COMPANY against any and all claims by any THIRD PARTY in respect of any infringement relating to INTELLECTUAL PROPERTY RIGHTS claimed to relate to the developed item.
- 26.2. In respect of the GOODS and any GOODS that are transferred to the COMPANY as part of the GOODS and/or SERVICES under the ORDER, including without limitation the deliverables or any part of them, the SUPPLIER warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the COMPANY it will have full and unrestricted rights to sell and transfer all such items to the COMPANY.
- 26.3. The SUPPLIER assigns to the COMPANY, with full title guarantee and free from all THIRD PARTY rights, all patents, rights to inventions, utility models, copyright and related rights, trade-marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other INTELLECTUAL PROPERTY RIGHTS, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world in the products of the GOODS and/or SERVICES, including for the avoidance of doubt the deliverables.
- 26.4. The SUPPLIER shall obtain waivers of all moral rights in the products of the GOODS and/or SERVICES, including for the avoidance of doubt the deliverables, to which any individual is now or may be at any future time entitled in any jurisdiction.
- 26.5. The SUPPLIER shall, promptly at the COMPANY'S request, do (or procure to be done) all such further requirements and the execution of all such other documents as the COMPANY may from time to time require for the purpose of securing for the COMPANY the full benefit of the ORDER, including all right, title and interest in and to the INTELLECTUAL PROPERTY RIGHTS assigned to the Purchaser in accordance with Condition 26.3.
- 26.6. All the COMPANY Materials are the exclusive property of the COMPANY.

27. PUBLICITY

The SUPPLIER shall not without the written consent of the COMPANY make any announcement, statement or publication to the press or other public media relating to the ORDER, the COMPANY or the COMPANY'S business and activities.

28. MARKING

The COMPANY reserves the right without recourse to the SUPPLIER to incorporate in or mark upon the GOODS its COMPANY Name or Logo.

29. COMPANY SUPPLIED INFORMATION

The SUPPLIER undertakes to the COMPANY that it shall exercise prudence and diligence in checking and verifying information and particulars supplied by the COMPANY. Should the SUPPLIER discover any discrepancies, ambiguities or inaccuracies in such information and particulars, it shall inform the COMPANY in writing, failing which any work performed in relation to the WORK shall be at the SUPPLIER'S own risk, cost and expense.

30. CONFIDENTIALITY

- 30.1. Subject to Clause 30. the SUPPLIER undertakes to the COMPANY that it shall keep confidential and shall not disclose and shall use only for the purpose of the ORDER any CONFIDENTIAL INFORMATION.
- 30.2. The obligations of confidentiality under this Clause shall not apply to and CONFIDENTIAL INFORMATION which the SUPPLIER can prove:
- (a) was already known to it prior to its receipt from a member of the COMPANY GROUP;
 - (b) was subsequently disclosed to it lawfully by a THIRD PARTY who did not obtain the same (whether directly or indirectly) from a member of the COMPANY GROUP;
 - (c) was in the public domain at the time of receipt by the SUPPLIER or has subsequently entered the public domain other than by reason of the breach of the provisions of this Clause or of any of the obligations of confidence owed to the COMPANY by the SUPPLIER or by any of the person listed in Clause 30.3;
 - (d) is independently developed by the SUPPLIER without using or referring to CONFIDENTIAL INFORMATION;
 - (e) is required to be disclosed by a court of law, regulatory authority or tribunal of competent jurisdiction.
- 30.3. Notwithstanding the provisions Clause 30.2, the SUPPLIER may disclose such CONFIDENTIAL INFORMATION to its SUBCONTRACTORS, its and their AFFILIATES and to its and their respective PERSONNEL and to the SUPPLIER'S insurers and insurance brokers who need such CONFIDENTIAL INFORMATION for the purpose of the enabling the SUPPLIER to perform any of its respective obligations or to exercise any of its respective rights under the ORDER, provided that the SUPPLIER shall procure that the recipient keeps such CONFIDENTIAL INFORMATION confidential and does not disclose it for any other purpose.
- 30.4. All notes, computer disks and tapes, memoranda, correspondence, records, documents, reports and other tangible items provided by the COMPANY or any of its AFFILIATE used or held by the SUPPLIER during the period of the ORDER which relate directly or indirectly to the business of the COMPANY or any of its AFFILIATE shall be and remain at all times property of the COMPANY or any of its AFFILIATE Upon termination or expiration of the ORDER the SUPPLIER shall promptly deliver to the COMPANY all such tangible items which are in its possession or control and which either belong to the COMPANY, or any of its AFFILIATE or contain CONFIDENTIAL INFORMATION, provided that the SUPPLIER shall have the right to take copies of any such tangible items for its own records, subject to the confidentiality obligations set out in this clause.
- 30.5. The provision of this Clause shall survive termination or expiration of the ORDER.

31. SOFTWARE

Where software forms all or part of the requirement of the ORDER the SUPPLIER warrants that the COMPANY has been provided with any condition of use or licence terms relating to such software prior to the order date identified on the ORDER. In the event that such conditions or licence terms have not been provided the SUPPLIER agrees to waive their application. The SUPPLIER warrants that it is the owner of the INTELLECTUAL PROPERTY in such software to be supplied or has a valid licence from the owner of the INTELLECTUAL PROPERTY to sell or sub-licence the software to the COMPANY.

32. FORCE MAJEURE

- 32.1. Neither Party shall be liable to the other as a result of any delay nor failure to perform its obligations under the ORDER if and to the extent that such delay or failure is caused by an event of FORCE MAJEURE.
- 32.2. If an event of FORCE MAJEURE prevents the SUPPLIER from supplying GOODS and/or SERVICES, then the SUPPLIER shall give written notice of such cause within twenty- four hours (of its occurrence. The COMPANY may then (subject to its acceptance of the SUPPLIER'S CLAIM, but without prejudice to the COMPANY'S other rights) allow such extra time for delivery as is reasonable in the circumstances, provided that the SUPPLIER shall have used its best endeavours to mitigate the effects of the event and to complete its obligations promptly. However, if such event or circumstances prevent the SUPPLIER from supplying the GOODS and/or SERVICES for more than seven (7) days, the COMPANY shall have the right, without limiting its other rights or remedies, to terminate the ORDER with immediate effect by giving written notice to the SUPPLIER.

33. STATUTORY DUTIES AND HEALTH, SAFETY AND ENVIRONMENTAL

The SUPPLIER undertakes to ensure that all GOODS and/or SERVICES supplied by the SUPPLIER to the COMPANY pursuant to the ORDER shall comply with the requirements of the Health and safety at Work Act 1974 and subsequent additions and legislations thereto.

34. TERMINATION

34.1. The COMPANY may terminate the ORDER or any part thereof at any time for its sole convenience by giving written notice to the SUPPLIER, whereupon the SUPPLIER shall discontinue all work on the ORDER. If such event occurs then the COMPANY shall be entitled to possession of all property to which it has title, and the COMPANY shall compensate the SUPPLIER for the WORK so far completed in accordance with the ORDER (and in respect of which the COMPANY has title) and the COMPANY shall have no other liability to the SUPPLIER arising as a result of such termination.

34.2. In the event that the SUPPLIER:

- (a) commits a breach of any of the provisions of the ORDER, and in the case if such breach which is capable of remedy, fails to remedy the same within such reasonable period as determined by the COMPANY (taking account of the COMPANY'S operational requirements) after receipt by the SUPPLIER of a notice from the COMPANY giving details of the breach and requiring the SUPPLIER to remedy such breach; or
- (b) makes any composition or arrangement with its creditors, becomes insolvent or goes into liquidation or receivership or is the subject of an administration order or any event occurs, or proceedings are 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 aforementioned events.

then the SUPPLIER shall be deemed to be in material breach and the COMPANY shall be entitled to terminate the ORDER or any part thereof by written notice to the SUPPLIER at any time.

34.3. In the event of termination pursuant to Clause 27.1. without prejudice to its other rights or remedies the COMPANY, shall be entitled to engage a THIRD PARTY to carry out the WORK, have the WORK removed from the SUPPLIER'S workplace and/or refuse to accept delivery, and, if appropriate, return any part of the WORK already delivered. Further, the COMPANY shall be entitled to possession of all property to which it has title and wishes to obtain, and the SUPPLIER shall be entitled to receive the amount of money then due under the ORDER less any additional sums that the COMPANY may incur as a result of having the WORK satisfactorily carried out or completed by others, and the SUPPLIER shall reimburse the COMPANY for any sums already paid related to WORK refused or returned by the COMPANY to the SUPPLIER plus all associated costs incurred by the COMPANY.

34.4. The SUPPLIER shall assume all liability for and shall defend, indemnify and hold harmless the COMPANY GROUP from and against any and all CLAIMS directly attributable or related to a breach by the SUPPLIER as described in Clause 34.2.

34.5. Unless otherwise agreed herein termination of the ORDER shall not affect any of the PARTIES' rights and remedies that have accrued at termination. Clauses which expressly or by implication survive termination of the ORDER shall continue in full force and effect.

35. SUSPENSION

35.1. If the SUPPLIER fails to comply with the ORDER after receipt of a notice from the COMPANY concerning a fault or deficiency of the SUPPLIER in the provision of the WORK, the COMPANY shall have the right at any time and at its sole option, to order the SUPPLIER to suspend the WORK, or any part thereof, until such time as the SUPPLIER has remedied the fault or deficiency or until all measures the SUPPLIER intends to implement to remedy such fault or deficiency have been APPROVED, and the SUPPLIER shall immediately suspend the WORK as instructed by the COMPANY. The SUPPLIER shall promptly resume performance of suspended WORK upon receipt of notice to continue from the COMPANY and to the extent required therein. The SUPPLIER shall not be entitled to any additional compensation regardless of costs, expenses and delays incurred by the SUPPLIER in remedying such fault or deficiency and/or due to suspension of the WORK. Such suspension shall not relieve the SUPPLIER from any of its obligations under the ORDER.

36. SUBCONTRACTORS

- 36.1. The SUPPLIER shall not subcontract the whole of the WORK. The SUPPLIER shall not subcontract any part of the WORK without the prior approval of the COMPANY. Notwithstanding the foregoing, provided that the COMPANY is notified prior to commencement of the ORDER, no consent shall be required where the SUPPLIER customarily orders components or parts for incorporation into any GOODS from a SUBCONTRACTOR.
- 36.2. Before entering into any subcontract, the COMPANY shall be given an adequate opportunity to review the form of subcontract, the choice of SUBCONTRACTOR, the part of the WORK included in the subcontract and any other relevant details requested by the COMPANY.
- 36.3. No subcontract shall bind or purport any member of the COMPANY GROUP. Nevertheless, the SUPPLIER shall ensure that any SUBCONTRACTOR shall be bound by and observe the provisions of the ORDER in so far as they apply to the subcontract.
- 36.4. Each subcontract shall expressly provide for the SUPPLIER'S unconditional right of assignment or novation of the subcontract to the COMPANY in the event that the COMPANY terminates the ORDER of the WORK.
- 36.5. The SUPPLIER shall be responsible for all works, acts, omissions and defaults of any SUBCONTRACTOR as fully as if they were work, acts, omissions or defaults of the SUPPLIER.

37. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

Without prejudice to the provisions of Clause 38 the SUPPLIER shall observe, be bound by and comply with all APPLICABLE LAWS governing the provision of the WORK and comply (and ensure that the SUPPLIER'S PERSONNEL comply) with all regulations and procedures of the COMPANY

38. COMPLIANCE WITH LAWS**38.1. Health, Safety and Environmental Compliance**

The Supplier shall ensure that all GOODS:

- (a) are safe and without risk to health when properly used and the SUPPLIER shall supply to the COMPANY and COMPANY'S CUSTOMERS (where appropriate) complete and accurate information to inform the safe and proper use of the Products (including, where appropriate, safety data sheets);
- (b) comply with all applicable laws, statutes, regulations, ordinances, rules, permits, licences, authorisations, codes of conduct and directions and requirements of any relevant governments or regulatory authorities (including, where applicable to the Products, the Registration Evaluation and Authorisation of Chemicals (REACH) regime, the Waste Electrical and Electronic Equipment (WEEE) regime, the Batteries Directive, the Restriction of Hazardous Substances in Electronic and Electrical Equipment (RoHS) regime, Classification Labelling and Packaging of Substances and Mixtures (CLP) regime or any replacement, substantially similar or equivalent legislation);
- (c) the SUPPLIER shall unless stated otherwise provide a declaration of conformity, material and test certification which shall accompany delivery of the GOODS. In addition, the COMPANY shall, at its sole discretion, have reasonable access at all reasonable times to the SUPPLIER'S technical files relating to the GOODS;
- (d) the SUPPLIER acknowledges and agrees that the COMPANY is relying upon the SUPPLIER to ensure that it meets these requirements in respect of the GOODS;
- (e) where the SUPPLIER is based outside the UK, the SUPPLIER shall, where relevant, act as importer of the GOODS into the UK for the purposes of the REACH regime and appoint an Only Representative to ensure the SUPPLIER'S adherence to the REACH regime and the provisions of this Clause 38 (Compliance with Laws);
- (f) Requests by the COMPANY to change the structure of the GOODS, or any part thereof shall not relieve the SUPPLIER of its obligations hereunder.

38.2. Anti-Corruption and Tax Compliance

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38.2.1 The SUPPLIER shall not and shall procure that the SUPPLIER GROUP (as defined in the Bribery Act 2010) will not commit or be involved in committing a Prohibited Act in connection with the provisions of this ORDER. The COMPANY shall be entitled to terminate this ORDER and to recover from the SUPPLIER the amount of any loss or damage resulting from such a termination if the SUPPLIER or any of its AFFILIATES shall in relation to this ORDER have committed any act whether before, on or after the date of this ORDER which is an offence under the Bribery Act 2010, or any statutory amendment, modification or re-enactment thereof, or would have constituted such an offence if:

- (a) such member of the SUPPLIER or its AFFILIATES, not being an agent, was deemed for this purpose to be an agent; or
- (b) the act, having been committed outside the United Kingdom, had been committed within the United Kingdom.

38.3. Modern Slavery & Labour Law Compliance

38.3.1. The SUPPLIER shall comply with the Modern Slavery Act 2015 including ensuring that neither the SUPPLIER nor any of its PERSONNEL associated with it is engaged in slavery or human trafficking.

38.3.2. The SUPPLIER represents and warrants that neither the SUPPLIER nor any of its PERSONNEL associated with it:

- (a) has been convicted of any offence involving slavery and/or human trafficking; and
- (b) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and/or human trafficking.

38.3.3. The SUPPLIER shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

38.4. Due Diligence

The SUPPLIER shall respond to any reasonable requests for information from the COMPANY from time to time in relation to the SUPPLIER'S activities pursuant to this ORDER including concerning matters referred to in this Clause 38 (Compliance with Laws). The SUPPLIER warrants and represents that all such information provided shall be complete and accurate.

38.5. Rights of the Purchaser

38.5.1. If the COMPANY concludes, in its reasonable opinion that the SUPPLIER and/or SUPPLIER GROUP, in all cases whether or not acting with the SUPPLIER'S knowledge) has breached any of Clauses 38.1 to 38.4 above, then the COMPANY may immediately terminate this ORDER on providing written notice to the SUPPLIER. Any notice of termination under this Clause shall specify:

- (a) the nature of the breach;
- (b) the identity of the party whom the COMPANY believes has committed the breach; and
- (c) the date on which the ORDER will terminate.

38.5.2. The Supplier shall indemnify, in full and on demand, and hold the COMPANY harmless against any and all liabilities, claims, fines, costs, losses or damages arising from or related to any breach of this Clause 38 (Compliance with Laws) or the termination of this ORDER pursuant to Clause 38.5.1.

39. INDEPENDENCE OF SUPPLIER

The SUPPLIER shall manage, control and direct the WORK as an independent supplier in due compliance with the provisions of the ORDER. The SUPPLIER warrants and represents that it is acting as an independent supplier and neither the SUPPLIER nor any of its PERSONNEL shall be employees, agents or servants of the COMPANY.

40. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

40.1. The PARTIES agree that the Contracts (Right of Third Parties) Act 1999 the ("ACT") shall apply to the ORDER only in respect of any relief from liability hold harmless, indemnity or benefit created in favour of those members of the COMPANY GROUP (other than the COMPANY).

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- 40.2. Subject to Clause 40.1 above, the PARTIES intent that no provision of the ORDER shall confer any benefit, nor be enforceable by any PERSON who is not a party by virtue of the ACT.
- 40.3. Notwithstanding the foregoing, the ORDER may be rescinded, amended or varied by the PARTIES without notice to or to the consent of said members even if, as a result any of said members' right to enforce a term of the ORDER may be varied or extinguished.
- 40.4. In enforcing any right to which it is entitled by virtue of the ACT and the provisions of the ORDER, the remedies of any of those members referred to in Clause 40.1 above shall be limited to damages.
- 40.5. Any of those members referred to in Clause 40.1. above shall not be entitled to assign benefit or right conferred on it under the ORDER by virtue of the ACT.
- 40.6. The rights mentioned in Clause 40.4. shall be subject to the following:
- (a) any CLAIM or reliance on any term of the ORDER by those members referred to in Clause 40.1. shall be notified in writing in accordance with the requirements of Clause 49.5. by such member as soon as such member becomes aware that an event is likely to give rise to such a CLAIM and such notification shall contain the following information as a minimum;
 - i. details of the occurrence giving rise to the CLAIM; and
 - ii. the right relied upon by the member under the ORDER.
 - (b) the provisions of Clause 41.6(a) shall apply in respect of any CLAIM by a member.
 - (c) The member's written agreement to submit irrevocably to the exclusive jurisdiction of the English Courts in respect of all matters relating to such rights.

41. ASSIGNMENT

41.1. Assignment of ORDER by COMPANY

The COMPANY may assign or transfer any of its rights and/or obligations under the ORDER insofar as it relates to the whole or any part of the WORK to any third party without the consent of the SUPPLIER.

41.2. Procedure for Assignment

The SUPPLIER undertakes that, in the event of any assignment described above, it will execute without delay a formal assignment of interest in the ORDER to the relevant party; to be effective upon the written assumption by the assignee of all obligations of the COMPANY under the ORDER.

41.3. Assignment of ORDER by SUPPLIER

Unless with APPROVAL, the SUPPLIER shall not assign the ORDER nor transfer any part of it, nor any benefit, interest, right or obligations therein not payment due thereunder.

42. NOVATION

The COMPANY may at any time novate the ORDER to a THIRD PARTY without the consent of the SUPPLIER and the SUPPLIER hereby agrees to undertake such acts and sign such documents as may be necessary to give effect to the rights granted by this Clause.

43. SEVERABILITY

If a court or any other competent authority finds that any provision (or part of any provision) of the ORDER is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the ORDER shall not be affected. If any invalid, unenforceable or illegal provision of the ORDER would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable to the fullest extent permitted by law.

44. CHANGES TO THIS ORDER

Any variation, including any additional terms and conditions, to the ORDER shall only be effective when agreed in writing and signed by the authorised signatories of both PARTIES.

45. EXPORT AND IMPORT REGULATIONS**45.1. FOREIGN SUPPLIERS**

45.1.1. In respect of the GOODS the SUPPLIER shall be responsible for ensuring compliance with its Government's export resolutions and any other country's export regulations from where parts of the GOODS originate and the SUPPLIER upon receipt of any ORDER placed indemnifies the COMPANY against any costs of violation or breach of the said export regulations.

45.1.2. EU SUPPLIERS shall provide the following, to the COMPANY'S REPRESENTATIVE:

- (a) The anticipated delivery date of the shipment to a UK port or airport;
- (b) Flight/shipment details including reference to the ORDER;
- (c) All necessary export/import (whichever is appropriate) documentation plus invoice, delivery note MRN Number, Commodity Code per Item and Country of Origin by Item

45.1.3. NON-EU SUPPLIERS shall provide the following to the COMPANY'S REPRESENTATIVE

- (a) The anticipated delivery date of the shipment to a UK port or airport;
- (b) Flight/shipment details including reference to the ORDER;
- (c) All necessary export/import (whichever is appropriate) documentation plus invoice, delivery note , waybill, Commodity Code per Item and Country of Origin by Item

45.2. UK SUPPLIERS

45.2.1. In respect of the GOODS the SUPPLIER shall be responsible for ensuring compliance with other country's export regulations, such as the US Government's export administration regulations, from where parts of the GOODS originate and the SUPPLIER upon receipt of any order placed indemnifies the COMPANY against any costs of violation or breach of the said export regulations.

46. NO JOINT VENTURE, AGENCY OR EMPLOYMENT

This ORDER represents a contract for the supply of GOODS and/or SERVICES (which may include professional advice) by the SUPPLIER to the COMPANY and does not constitute or imply any other arrangement between the PARTIES whether employment, partnership (whether or not as defined under the Partnership Act 1890 or joint venture. Nothing in these conditions or in any agreement entered into pursuant hereto shall constitute either PARTY as the agent or representative of the other and no PARTY shall be entitled to commit the other or others to any liability, relationship or arrangement, whether or not legally binding. Save for any damage to property of personal injury caused by the COMPANY or its AFFILIATES, the SUPPLIER shall be liable for and shall release and indemnify the COMPANY or its AFFILIATES against any claim whatsoever made against the COMPANY or its AFFILIATES by any of the SUPPLIER'S PERSONNEL.

47. DATA PROTECTION

47.1. In this Clause 47 the following expressions shall have the following meanings:

"BREACH OF SECURITY" means a breach of security leading to accidental or unlawful destruction, loss, alternation, unauthorised disclosure of, or access to PERSONAL DATA;

"DATA PROTECTION LEGISLATION" means the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), together with the equivalent legislation of any other applicable jurisdiction and all other applicable law, regulations and codes of conduct in any relevant jurisdiction relating to the processing of personal data and privacy including the guidance and codes of practice issued by the UK Information Commissioner as the same may be amended, updated or replaced from time to time;

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"PERSONAL DATA", "DATA SUBJECT", "DATA CONTROLLER", "PROCESSING" and "PROCESS" have the meanings set out in the Data Protection Legislation.

"RESTRICTED COUNTRY" means a country outside the European Economic Area.

47.2. In connection with the performance of its obligations, the SUPPLIER may process PERSONAL DATA regarding individuals whose details have been made available to the SUPPLIER by the COMPANY or the COMPANY GROUP (whether directly or indirectly). The SUPPLIER shall:

- (a) PROCESS the PERSONAL DATA only on behalf of the COMPANY (or another member of the COMPANY GROUP if applicable), only for the purposes of the WORK and only in accordance with instructions from the COMPANY;
- (b) not otherwise modify, amend or alter the contents of the PERSONAL DATA unless specifically authorised to do so in writing by the COMPANY;
- (c) implement appropriate technical and organisational measures to protect PERSONAL DATA against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
- (d) not disclose or transfer the PERSONAL DATA to any third party or SUPPLIER PERSONNEL unless necessary for the provision of the GOODS and/or SERVICES and, for any disclosure or transfer of PERSONAL to any THIRD PARTY, obtain the prior written consent of the COMPANY. Without limiting the foregoing where the SUPPLIER wishes to appoint a SUBCONTRACTOR for the purpose of delivering the GOODS and/or performing the SERVICES or in relation to any of its obligations under the ORDER, the SUPPLIER shall, where such SUBCONTRACTOR shall PROCESS PERSONAL DATA, ensure that it has obtained the prior written consent of the COMPANY before transferring the PERSONAL DATA to the SUBCONTRACTOR and entered into a written agreement with the SUBCONTRACTOR on terms which are substantially the same as, but no less onerous than, the terms set out in this Clause 49 and a provision restricting the ability of the SUBCONTRACTOR to sub-contract all or any part of the services provided to the SUPPLIER under such ORDER without first seeking the consent of the COMPANY;
- (e) take all reasonable steps to ensure the reliability and integrity of the SUPPLIER PERSONNEL who have access to the PERSONAL DATA and ensure that the SUPPLIER PERSONNEL have entered into appropriate contractually binding confidentiality undertakings or are bound by relevant binding confidentiality undertakings by enactment;
- (f) co-operate as requested by the COMPANY to enable the COMPANY to comply with any exercise of rights by a DATA SUBJECT under the DATA PROTECTION LEGISLATION
- (g) provide the COMPANY with full cooperation and assistance (within the timescales, reasonably required by the COMPANY) to ensure the COMPANY'S compliance with its obligations under the Data Protection Legislation, including:
 - i. obligations relating to ensuring the security and integrity of the PERSONAL;
 - ii. obligations relating to notification of any Breach of Security to any supervising authority and/or the DATA SUBJECT;
 - iii. undertaking any data protection impact assessments (as required by the Data Protection Legislation);
- (h) notify the COMPANY immediately if it considers in its opinion any of the COMPANY'S instructions infringe the DATA PROTECTION LEGISLATION;
- (i) notify the COMPANY immediately on becoming aware (and in any event within 24 hours of) any data security breach, or suspected data security breach relating to PERSONAL DATA;
- (j) permit the COMPANY or its external advisers to inspect and audit the SUPPLIER'S DATA PROCESSING activities and those of PERSONNEL; and
- (k) not PROCESS or otherwise transfer any PERSONAL DATA in or to any RESTRICTED COUNTRY without the prior written consent of the COMPANY. Where the SUPPLIER wishes to PROCESS or transfer any PERSONAL DATA in or to any RESTRICTED COUNTRY the following provisions shall apply:
 - i. the SUPPLIER shall submit a request to the COMPANY which shall set out the following details:
 - a. the PERSONAL which will be transferred to and/or PROCESSED in the RESTRICTED COUNTRY;
 - b. the RESTRICTED COUNTRY or COUNTRIES which the PERSONAL DATA will be transferred to and/or PROCESSED in;
 - c. any SUBCONTRACTOR or other THIRD PARTIES who will be PROCESSING and/or receiving PERSONAL DATA in RESTRICTED COUNTRIES; and

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- d. how the SUPPLIER will ensure an adequate level of protection and adequate safeguards in respect of the PERSONAL DATA that will be PROCESSED in and/or transferred to RESTRICTED COUNTRIES so as to ensure the COMPANY'S compliance with DATA PROTECTION LEGISLATION;
- ii. the SUPPLIER shall comply with such other instructions and shall carry out such other actions as the COMPANY may notify in writing, including:
 - a. incorporating standard and/or model clauses (which are approved by the European Commission or other regulatory body having jurisdiction as offering adequate safeguards under the DATA PROTECTION LEGISLATION) into the ORDER or a separate DATA PROCESSING agreement between the PARTIES; and
 - b. procuring that any SUBCONTRACTOR or other THIRD PARTY who will be PROCESSING and/or receiving or accessing the PERSONAL DATA in any RESTRICTED COUNTRY either enters into:
 - 1. a direct data processing agreement with the COMPANY on such terms as may be required by the COMPANY, or
 - 2. a data processing agreement with the SUPPLIER on terms which are equivalent to those agreed between the COMPANY and the SUBCONTRACTOR relating to the relevant PERSONAL DATA transfer, and in each case which the SUPPLIER acknowledges may include incorporation of the model clause provisions (which are approved by the European Commission or other regulatory body having jurisdiction as offering adequate safeguards under the DATA PROTECTION LEGISLATION) and technical and organisational measures which the COMPANY deems necessary for the purpose of protecting the PERSONAL DATA.

47.3. Except as otherwise provided, nothing in these Conditions shall transfer ownership of, or create any licences (implied or otherwise), in any intellectual property rights in any PERSONAL DATA.

47.4. The SUPPLIER shall immediately following a request by the COMPANY: (i) return all PERSONAL DATA to the COMPANY along with all copies or other records of the same; or (ii) destroy and/or delete all such PERSONAL DATA and provide written confirmation of the same to the COMPANY.

47.5. The SUPPLIER indemnifies and shall keep the COMPANY indemnified against all liabilities, losses, demands, damages, costs, claims and expenses (including without limitation legal expenses) suffered by the COMPANY, including payment of compensation to a THIRD PARTY and its expenses in settling such THIRD PARTY CLAIM, as a result of any failure by the SUPPLIER to comply with its obligations in accordance with this Clause 47.

48. NETWORK AND INFORMATION SYSTEMS

48.1. The SUPPLIER acknowledges that the COMPANY is subject to NIS and undertakes (i) not to cause the COMPANY to breach its obligations under NIS and (ii) to act in such a manner as to enable the COMPANY to comply with all its obligations under the NIS.

48.2. Without prejudice to the generality of the SUPPLIER'S obligation under the Clause 48.1, the SUPPLIER shall, and shall procure that the SUPPLIER PERSONNEL and its SUBCONTRACTORS shall:

48.2.1. having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to comply with this Clause 48. and ensure the security of the WORK and the COMPANY GROUP SYSTEMS in accordance with the ORDER and GOOD INDUSTRY PRACTICE. The SUPPLIER shall on a regular (or, where appropriate) ongoing basis, monitor and test such security measures;

48.2.2. as soon as reasonably practicable and within such timeframes set by the COMPANY GROUP to ensure that the COMPANY'S compliance with NIS, comply with any reasonable instructions relating to the security of the WORK and/or any COMPANY GROUP SYSTEMS which are notified to it by the COMPANY;

48.2.3. provide the COMPANY with such assistance and/or cooperation as it may require to comply with NIS as well as any guidance or instructions which may be issued by any competent authority or industry in relation to NIS.

48.2.4. promptly provide the COMPANY with any information which the COMPANY may request, including an updated Vendor details, in order to assess the risk profile of the ORDER and the WORK, the SUPPLIER'S compliance with this Clause 48, and/or the COMPANY'S compliance with NIS;

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48.2.5. have in place, maintain and enforce appropriate policies and procedures which ensure compliance with this Clause 48. The SUPPLIER shall make any modifications to such policies and procedures which are reasonably required by the COMPANY to ensure the COMPANY'S compliance with NIS;

48.2.6. ensure that all SUPPLIER PERSONNEL (a) have entered into an appropriate contractually binding confidentiality undertakings (b) are sufficiently informed about the SUPPLIER'S obligations under this Clause 48; and (c) have undergone and continue to receive on a regular (and at least annual) basis, appropriate training in information security. In addition, if requested by the COMPANY the SUPPLIER shall require SUPPLIER PERSONNEL to attend training on NIS which is provided by a person nominated by the COMPANY.

48.3. Where the SUPPLIER engages SUBCONTRACTOR, the SUPPLIER shall ensure that each SUBCONTRACTOR complies with this CLAUSE 48. The SUPPLIER shall remain fully liable to the COMPANY for compliance with this Clause 48 such that the actions and omissions of the SUBCONTRACTOR shall be deemed to be actions and omissions by the SUPPLIER.

48.4. The SUPPLIER shall promptly, notify the COMPANY of any non-compliance with this Clause 48 by the SUPPLIER, its SUBCONTRACTORS and/or the SUPPLIER PERSONNEL, providing full details of such non-compliance.

48.5. In the event of a NIS INCIDENT, the SUPPLIER shall, and shall procure that its SUBCONTRACTOR'S shall:

48.5.1. immediately (any in any case within 24 hours) notify the COMPANY in writing upon becoming aware of the NIS INCIDENT and provide the COMPANY with all information relating to the NIS INCIDENT which is available at the time, including the NIS INCIDENT PARTICULARS;

48.5.2. promptly and fully investigate the NIS INCIDENT, including its causes, and implement any measures necessary to restore the level of security required under this Clause 48. and to mitigate any adverse effects of the NIS INCIDENT;

48.5.3. continue to provide further information relating to the NIS INCIDENT as it becomes available; and

48.5.4. comply with any instructions given by the COMPANY in relation to the NIS INCIDENT.

48.6. Except where an audit is required by a competent authority and/or if an NIS INCIDENT occurs in which case the COMPANY shall be entitled to conduct such audits as it considers (in its absolute discretion) appropriate, the SUPPLIER agrees, and shall procure that its SUBCONTRACTORS agree that the COMPANY and/or THIRD PARTIES nominated by the COMPANY may, not more than twice in any calendar year and by giving fifteen (15) business days' prior notice, conduct an audit (including by means of inspections) of the SUPPLIER and/or each SUBCONTRACTOR, to review the SUPPLIER'S and SUBCONTRACTOR'S security arrangements and their compliance with this Clause 48. The SUPPLIER shall and shall procure that its SUBCONTRACTORS shall provide the COMPANY with full co-operation and assistance, including but not limited to access to information, premises, equipment, and staff. If an audit identifies a material breach of the terms of this Clause 48, the SUPPLIER shall reimburse the COMPANY for all reasonable costs and expenses incurred in connection with that audit.

48.7. The SUPPLIER shall indemnify and keep indemnified and hold harmless the COMPANY from and against all and any losses, liabilities, damages, costs and expenses, which arise from breach by the SUPPLIER or any SUBCONTRACTOR of this Clause 48, including:

48.7.1. any monetary penalties or fines levied by a competent authority on the COMPANY;

48.7.2. the costs of investigative, corrective or compensatory action required by a competent authority, or of defending proposed or actual enforcement taken by a competent authority; and

48.7.3. any losses suffered or incurred by, awarded against, or agreed to be paid by the COMPANY.

49. GENERAL LEGAL PROVISIONS**49.1. Entire Agreement**

The ORDER embodies the entire agreement between the PARTIES with respect to the performance of the WORK and supercedes all prior oral and written understandings, agreements, qualifications and representations made between the PARTIES prior to the execution hereof. Any conditions of contract arising from the SUPPLIER ("SUPPLIER CONDITIONS") which are included with any acknowledgement of order or invoice or other documentation shall be expressly excluded from the ORDER, shall not be deemed to become part of the ORDER by virtue of the COMPANY'S acceptance of the WORK, payment of invoice(s) or otherwise and the SUPPLIER waives the right which it otherwise might have to rely on such SUPPLIER CONDITIONS.

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49.2. Invalidity

If and for as long as any provision of the ORDER shall be deemed to be judged invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of any other provision of the ORDER except only so far as shall be necessary to give effect to the construction of such invalidity, and in such a case any such invalid provisions shall be deemed severed from the ORDER without effecting in any way the validity of the balance of the ORDER.

49.3. Waiver

A waiver of any right under the ORDER is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a PARTY in exercising any right or remedy under the ORDER or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise.

49.4. Survival of Clauses

Termination of the ORDER and/or the COMPANY'S acceptance of WORK or any part thereof shall not release the PARTIES from obligations which expressly or by their nature survive the ORDER or extend beyond termination of the ORDER and any acceptance of WORK.

49.5. Notices

Any notice or other communications required to be given to a Party under or in connection with the ORDER shall be in writing and shall be delivered to the other PARTY personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business or may be sent by email to COMPANY OR SUPPLIER'S REPRESENTATIVE. Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email, at the time of sending (provided no notification of failed delivery is received by the Company). This Clause 49.5 shall not apply to the service of any proceedings or other documents in any legal action.

50. JURISDICTION AND LAW

The ORDER, 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 English Law and the PARTIES irrevocably submit to the exclusive jurisdiction of the English courts.