

# General Conditions for the Supply of Products and Services

## General Conditions for the Supply of Products and Services of Bachmann Electrical Engineering Limited for commercial transactions between businesses

### Article I: Contract

1. These terms and conditions set out the basis upon which the Supplier provides to the Purchaser the products of the Supplier (hereinafter referred to as "Goods") and the services (hereinafter referred to as "Services") which are named in the relevant order form ("Order Form"). The submission by the Purchaser to the Supplier of the Order Form (signed on behalf of the Purchaser) constitutes an offer by the Purchaser to purchase the Goods and/or Services set out in the Order Form subject to these terms and conditions. The Purchaser's offer shall be accepted when the Supplier signs the Order Form and submits this to the Purchaser, at which point and on which date (and not before) a contract ("Contract") shall be created between the parties for the supply by the Supplier to the Purchaser of the Goods and/or Services referred to in the Order Form on these terms and conditions (and any additional terms and conditions which are set out in the Order Form). Each Order Form signed by the parties shall form a separate Contract unless otherwise agreed in writing. All Contracts are subject to these terms and conditions (and any additional terms and conditions set out in any relevant Order Form), which apply to the exclusion of any terms and conditions contained in any order form or document submitted by the Purchaser, or which are implied by trade, custom, practice or course of dealing. If, in relation to any Contract, there is a conflict or inconsistency between the terms set out in these terms and conditions and the terms set out in any Order Form, the terms set out in the Order Form shall prevail. For this purpose an omission (whether deliberate or inadvertent) is not, by itself, to be construed as giving rise to a conflict or an inconsistency.

2. Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of thirty 30 business days from the date on which it is issued.

3. The Contract constitutes the entire agreement between the parties. The Purchaser acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

### Article II: Goods and/or Services

1. The Goods and/or Services are described in the Supplier's Order Form. 2. To the extent that the Goods and/or Services are to be manufactured in accordance with a specification supplied by the Purchaser the Purchaser shall indemnify the Supplier against all liabilities, costs, claims, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the specification. This Article II clause 2 shall survive termination of a Contract.

3. The Supplier reserves the right to amend the specification of the Goods and / or Services if required by any applicable statutory or regulatory requirements.

4. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods and/or Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.

### Article III: Supply of Services.

1. The Supplier shall provide the Services to the Purchaser in accordance with the Service specification and/or Order Form in all material respects. 2. The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order Form but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

3. The Supplier warrants to the Purchaser that the Services will be provided using reasonable care and skill.

4. If the Purchaser reports a failure of any item of the Services to the Supplier promptly following its discovery and in any event within 14 days following the completion of the performance by the Supplier of that item of the Services (providing the Supplier with such information, data and other materials as the Supplier may reasonably require) the Supplier shall investigate the failure in question and shall use all reasonable endeavours to remedy the failure. If the Supplier considers it to be appropriate, the remedy may include re-executing the item of Services in question.

5. If the Supplier is unable to remedy a failure in the manner described in this Article III clause 5 above the Supplier will, at the Purchaser's written request (and as an alternative to remedying the failure), reduce the charges attributable to the particular item of Services in which the failure occurred by such amount as is reasonable and fair to both parties having regard to the nature and effect of the failure.

6. The Supplier shall have no liability or obligation to the Purchaser for its failure to provide Services other than is referred to in this Article III clause 5 and clause 6.

### Article IV: Delivery of Goods

1. The Supplier shall ensure that:

(a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order Form, all relevant Purchaser and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order Form is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(b) if the Supplier requires the Purchaser to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Purchaser shall make any

such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

2. The Supplier shall deliver the Goods to the location set out in the Order Form or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Purchaser that the Goods are ready to be supplied.

3. Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Purchaser's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the provision of the Goods.

5. If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Purchaser in obtaining replacement Goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Purchaser's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

6. If the Purchaser fails to take delivery of the Goods within three Business Days of the Supplier notifying the Purchaser that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under a Contract:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Purchaser that the Goods were ready; and

(b) the Supplier shall store the Goods until delivery takes place, and charge the Purchaser for all related costs and expenses (including insurance).

7. If ten (10) Business Days after the day on which the Supplier notified the Purchaser that the Goods were ready for delivery the Purchaser has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Purchaser for any excess over the price of the Goods or charge the Purchaser for any shortfall below the price of the Goods.

8. The Purchaser shall not be entitled to reject the Goods if the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the invoice on receipt of notice from the Purchaser that the wrong quantity of Goods was delivered.

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

### ARTICLE V: Quality

1. The Supplier warrants that on delivery, and for a period of twelve (12) months from the date of delivery (Warranty Period), the Goods shall:

(a) conform in all material respects with their description and any applicable specification;

(b) be free from material defects in design, material and workmanship; and (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

2. Subject to Article V clause 3 below, if:

(a) the Purchaser gives notice in writing to the Supplier during the warranty period of discovery that some or all of the Goods do not comply with the warranty set out in Article V clause 1;

(b); and the Supplier is given a reasonable opportunity of examining such Goods; and (c) the Purchaser (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

3. The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in this Article V clause 1 if:

(a) the Purchaser makes any further use of such Goods after giving notice in accordance with this Article V clause 2;

(b) the defect arises because the Purchaser failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

(c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Purchaser;

(d) the Purchaser alters or repairs such Goods without the written consent of the Supplier;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

(f) the Goods differ from their description and /or specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

4. Except as provided in this Article V, the Supplier shall have no liability to the Purchaser in respect of the Goods' failure to comply with the warranty set out in Article V clause 1.

5. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from a Contract.

6. These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under Article V clause 2.

#### Article VI: Prices, Terms of payment, and Set-Off

1. The price of the Goods and/or Services and the charges payable by the Purchaser under any Contract in respect of the Goods and/or Services are set out in the applicable Order Form. All prices are ex-works and excluding packaging. All amounts payable by the Purchaser under the Contract are exclusive of amounts in respect of value added tax (or any similar taxes or export or import duties) chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Purchaser, the Purchaser shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services. If the Supplier is also requested to assemble or erect the Goods (the 'Assembly Services') and unless otherwise agreed in writing between the parties, the Purchaser shall pay the Supplier's charges for the Assembly Services and any travel, subsistence and incidental costs incurred by the Supplier and its employees, agents or sub-contractors attending site. The charges for the Assembly Services shall be provided on a time and materials basis i.e. the Purchaser pays the Supplier for all the time spent in performing the Assembly Services at the applicable Supplier rate.

2. Unless otherwise stated in the relevant Order Form, invoices shall be issued to the Purchaser upon signature of an Order Form.

3. Each invoice submitted by the Supplier shall be paid by the Purchaser to the Supplier in fully cleared funds:

(a) not later than 30 days after the date of the invoice; and  
(b) without regard to any equity, set off or counterclaim. Time for payment shall be of the essence of the Contract and, without prejudice to the Supplier's other rights and remedies, the Supplier shall charge interest on amounts not paid when due at the rate of 4% per annum above the base rate (varying) of the Supplier's bankers from time to time from the due date for payment to the actual date of payment, whether before or after judgment.

4. Unless otherwise stated in the Order Form, the Purchaser shall make payment of all the Supplier's invoices to the account detailed below:

ACCOUNT NAME: Bachmann Electrical Engineering Ltd  
BANK: Commerzbank, London Branch  
ACCOUNT NUMBER:30366960 SORT CODE:40-62-01  
SWIFT/BIC: COBAGB2X  
IBAN:GB57 COBA 4062 0130 3669 60

5. If in accordance with any relevant foreign legislation, any income tax, value added tax, or any other tax, levy, duty, charge, assessment or fee of any nature is required to be or is deducted or withheld from any payment made by the Purchaser under any Contract, the amount payable by the Purchaser shall be increased to an amount, which after making such deduction or withholding leaves the amount of the net payment unchanged in comparison to the payment which would have been due if no such deduction or withholding had been required.

#### Article VII: Risk & Retention of Title to the Goods

1. The risk in the Goods shall pass to the Purchaser on completion of delivery. Title to the Goods shall not pass to the Purchaser until the earlier of

(a) the Supplier receives payment in full (in cash or cleared funds) for the Goods in respect of which payment has become due; and  
(b) the Purchaser resells the Goods, in which case title to the Goods shall pass to the Purchaser at the time specified in Article VI clause 4 below.

2. Until title to the Goods have passed to the Purchaser, the Purchaser shall

(a) store the Goods separately from all other Goods held by the Purchaser so that they remain identifiable as the supplier's property;  
(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;  
(c) maintain the Goods in a satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;  
(d) notify the Supplier immediately it becomes subject to any of the events listed in Article XIII clause 4 and  
(e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

3. Subject to Article VI clause 4 below, the Purchaser may resell or use the Goods in the ordinary course of business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Purchaser resells the Goods before that time:

(a) it does so as principal and not as the Supplier's agent; and  
(b) title to the Goods shall pass from the Supplier to the Purchaser immediately before the time at which the resale by the Purchaser occurs. 4. If before title to the Goods passes to the Purchaser, the Purchaser becomes subject to any of the events listed in Article XIII clause 4, then without limiting any other right or remedy the Purchaser may have:

(a) the Purchaser's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and  
(b) the Supplier may at any time (i) require the Purchaser to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and (ii) if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Goods are stored in order to recover them. 5. The Purchaser shall inform the Supplier immediately of any seizure or other act or intervention by third parties and the Purchaser shall, without undue delay, provide the Supplier with the information and/or documents necessary to assert the claims it has against its Purchasers.

#### Article VIII: Term

1 Each Contract (and any Goods and/or Services to be provided under each Contract) shall commence on the relevant commencement date specified in the Order Form and shall continue (subject to earlier termination in accordance with these terms and conditions) until completion of both parties obligations under the Contract.

#### Article IX: Time

1. The Supplier shall use its reasonable endeavours to perform services or provide Goods and/or Services under any Contract within the time (if any) specified in the relevant Contract. However, notwithstanding any other provision of any Contract, any time, date or period for delivery or performance by the Supplier that is set out in any Contract shall be approximate only and time shall not be of the essence.

#### Article X: Purchaser's Obligations

1. The Purchaser shall:

(a) ensure that the terms of the Order Form and (if submitted by the Purchaser) the specification for the production of any Goods are complete and accurate;  
(b) co-operate with the Supplier in all matters relating to the Goods and/or Services  
(c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Purchaser's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Goods and/or Services;  
(d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Goods and/or Services, and ensure that such information is accurate in all material respects;  
(e) prepare the Purchaser's premises for the supply of the Goods and/or Services;  
(f) obtain and maintain all necessary licences, permissions and consents which may be required for the Goods and/or Services before the date on which the Goods and/or Services are to be provided or start;  
(g) keep and maintain all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Purchaser's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

2. If the Supplier's performance of any of its obligations in respect of the Goods and/or Services is prevented or delayed by any act or omission by the Purchaser or failure by the Purchaser to perform any relevant obligation (Purchaser Default):

(a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Goods and/or Services until the Purchaser remedies the Purchaser Default, and to rely on the Purchaser Default to relieve it from the performance of any of its obligations to the extent the Purchaser Default prevents or delays the Supplier's performance of any of its obligations;  
(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Purchaser arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Article IX clause 2; and  
(c) the Purchaser shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Purchaser Default.

#### Article XI: Force Majeure

1. In any Contract "Force Majeure" means any circumstance beyond the reasonable control of the party affected by it and includes, but is not limited to, fire, flood, industrial disputes, civil disturbance, acts of terrorism, acts of government and acts of God and absence of personnel due to illness or injury.

2. Neither party shall be liable for any failure to perform, or delay in performing, any of its obligations (other than payment and indemnity obligations) under any Contract if and to the extent that the failure or delay is caused by Force Majeure and the time for performance of the obligation, the performance of which is affected by Force Majeure, shall be extended accordingly.

3. If the party claiming relief under this Article IX clause 1 is prevented by the Force Majeure from wholly or substantially performing its obligations under any Contract for a continuous period of more than 30 days the other party shall be entitled to terminate the relevant Contract immediately by notice to the party claiming relief under Article IX clause 1. Neither party shall be liable to the other because of such termination but the Purchaser shall pay any invoices of the Supplier that are outstanding under the relevant Contract and a reasonable sum (which shall include all reasonable expenses incurred) in respect of any work undertaken by the Supplier under that Contract prior to termination in respect of which Supplier has not already issued an invoice to the Purchaser.

#### Article XII: Assembly and Erection

1) Unless otherwise agreed in written form, assembly and erection shall be subject to the following provisions:

(a) Purchaser shall provide at its own expense and in due time: (i) All earth and construction work and other ancillary work outside the Supplier's scope, including the necessary skilled and unskilled labour, construction materials and tools; (ii) The equipment and materials necessary for assembly and commissioning such as scaffolds, lifting equipment and other devices as well as fuels and lubrications; (iii) Energy and water at the point of use including connections, heating and lighting; (iv) Suitable dry and lockable rooms of sufficient size adjacent to the site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working and recreation rooms for the erection personnel, including sanitary facilities as are appropriate in the specific circumstances; furthermore, the Purchaser shall take all measures it would take for the protection of its own possessions to protect the possessions of the Supplier and of the erection personnel at the site; (v) Protective clothing and protective devices needed due to particular conditions prevailing on the specific site.

2. Before the erection work starts, the Purchaser shall unsolicitedly make available any information required concerning the location of concealed electric power, gas and water lines or of similar installations as well as the necessary structural data.

3. Prior to assembly or erection, the materials and equipment necessary for the work to start must be available on the site of assembly or erection and any preparatory work must have advanced to such a degree that assembly or erection can be started as agreed and carried out without any interruption. Access roads and the site of assembly or erection must be level and clear.

4. If assembly, erection or commissioning is delayed due to circumstances for which the Supplier is not responsible, the Purchaser shall bear the reasonable costs incurred for idle times and any additional traveling expenditure of the Supplier or the erection personnel.

5. If, after completion, the Supplier demands acceptance of the Goods and/or Services, the Purchaser shall comply therewith within a period of two weeks. The same consequences as upon acceptance arise if and when the Purchaser lets the two week period expire or the Goods and/or Services are put to use after completion of agreed test phases, if any.

#### Article XIII: Intellectual Property Rights; Indemnities and Licenses.

1. The Purchaser acknowledges that any intellectual property rights ("IPR") (see definition of IPR below) that subsist in the Goods and/or Services are and remain vested in the Supplier or the Supplier's third party licensors (whether or not such Goods and/or Services shall have been developed in connection with a specific request from the Purchaser) and the Purchaser shall at all times (notwithstanding the

termination of any Contract) take all reasonable steps to maintain the confidentiality of the IPR. For the purposes of these terms and conditions IPR means all current and future copyright, patents, trademarks or rights in databases, inventions, or trade secrets, know-how, rights in designs, topographies, trade and business names, domain names, marks and devices (whether or not registered) and all other intellectual property rights and applications for any of those rights (where such applications can be made) in each case in whatever part of the world.

2. To the extent that any of the Goods includes computer software, the Supplier grants to the Purchaser, and permits the Purchaser to grant to any subsequent buyer of the Goods, (collectively the 'Purchaser') a non-exclusive, non-transferable (except as set out above) license to use the software and any documentation for the normal operation of such Goods (but not for any other purpose) on the condition that the Purchaser undertakes, and procures that any subsequent buyer undertakes, (a) not to copy the software or the documentation except where such copying is incidental to the normal use of the software or where it is necessary for back up or operational security; (b) not to rent, lease, sub-license, loan, translate, merge, adapt vary or modify the software or any documentation; (c) not to make any alterations to or modifications of the whole or any part of the software or any part of it to be combined with, or become incorporated in, any other programs; (d) not to disassemble, decompile, reverse engineer or create derivative works based on the whole, or any part, of the software nor attempt to do any such things except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the software with another software program; and provided that the information obtained by the Purchaser during such activities: (i) is used only for the purpose of achieving inter-operability of the Software with another software program; and (ii) is not unnecessarily disclosed or communicated to any third party without the Supplier's prior written consent; and (iii) is not used to create any software which is substantially similar to the software; (e) to keep all copies of the software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the software; (f) to supervise and control use of the software and ensure that the Purchaser's employees and representatives and buyers use the software in accordance with the terms of this license

(g) to include the Supplier's copyright notice on all entire and partial copies the Purchaser makes of the software on any medium; (h) not to provide, or otherwise make available, the software in any form, in whole or in part (including, but not limited to, program listings, object and source program listings, object code and source code) to any person without prior written consent from the Supplier.

3. Supplier shall indemnify the Purchaser against all costs, claims, demands, expenses and liabilities arising out of or in connection with the normal use or possession of the Goods infringing any copyright (or rights in the nature of copyright) of any third party which is valid in the UK provided that the Purchaser promptly gives Supplier notice of any infringement claim to which this indemnity may apply, gives Supplier immediate and complete control of, and all reasonable assistance in connection with, the defence of the claim and all negotiations for its settlement or compromise and does not prejudice the defence of the claim and provided also that the infringement does not arise as a result of the use of the Goods in combination with any equipment or software not supplied or approved in writing by Supplier. Supplier is entitled, at its cost, to replace or change the Goods in order to avoid any infringement. This Article XIII clause 3 states Supplier's entire liability in respect of the infringement of the intellectual property rights of any third party.

4. The Purchaser shall indemnify the Supplier against any and all costs, claims, demands expenses, and liabilities with respect to any claims of a subsequent buyer of the Goods with respect to the use or possession or transfer of the Goods.

#### **Article XIV: Limitation of Liability**

1. Nothing excludes or limits Supplier's liability in respect of:

- (a) death or personal injury caused by Supplier's negligence;
- (b) fraudulent misrepresentation;
- (c) liability which may not otherwise be limited or excluded under applicable law.

2. Subject to this Article XIV clause 1, the Supplier's liability for loss of or damage to tangible property is limited to £1,000,000 in respect of each event or series of connected events.

3. Except as provided in this Article XIV clause 1 above, in no event is Supplier liable for:

- (a) loss of, or damage to, data or information;
- (b) loss of profits, business, contracts, opportunity or anticipated savings;
- (c) any indirect or consequential loss; whether arising from tort (including negligence), breach of contract or otherwise.

4. Except as provided in this Article XIV clauses 1 and 2, the Supplier's total liability for loss or damage (whether arising in contract, tort (including negligence) or otherwise howsoever incurred) arising out of or in connection with any Contract shall not, in the aggregate, exceed the total charges paid by the Purchaser to the Supplier under that Contract.

The provisions of this Article XIV shall survive termination of the whole or any part of any Contract.

#### **Article XV: Termination**

1. Each party is entitled by notice to the other to terminate any Contract immediately if the other commits a material breach of any term of that Contract and (in the case of a breach capable of remedy) fails to remedy the breach within thirty (30) days after having been given notice by the other party of the breach referring to this clause.

2. Supplier may suspend its performance of any Services whilst the Purchaser is in material default of any of the Purchaser's obligations under the relevant Contract or other contract including the Purchaser's payment obligations.

3. The Supplier may also by notice to the Purchaser suspend or terminate (at the Supplier's sole and absolute discretion) the supply of any Goods and/or Services immediately if the Purchaser does not pay any sum due to the Supplier under the relevant Contract in relation to the Goods and/or Services in question and that sum remains unpaid for thirty (30) days after the Supplier gives the Purchaser notice that

the sum has not been paid and refers expressly to the Supplier's right to terminate under this clause.

4. Each party is entitled by notice to the other to terminate any Contract immediately if:

(a) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

(c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

(e) the other party (being an individual) is the subject of a bankruptcy petition or order; (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

(h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver; (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this Article XV clause 4;

(k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

(l) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Purchaser's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

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

5. (a) an order is made or a resolution is passed for the winding up of the other party or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or

(b) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

(c) a receiver is appointed over a substantial part of the other party's assets or undertaking or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party or if any other person takes possession of or sells the other party's assets; or

(d) the other party makes any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

(e) the other party ceases to trade; or

(f) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt;

(g) provided that no right of termination shall arise under any of sub-clauses (a) to (f) where the event that would otherwise give rise to such right to terminate takes place pursuant to a solvent reconstruction or reorganisation and the succeeding party is a subsidiary of original party, a holding company of the original party or a subsidiary of a holding company of the original party (the terms subsidiary and holding company having the meanings given in section 1159 Companies Act 2006) with at least the same financial standing as the original party and undertakes in writing with the party who would otherwise be entitled to terminate to be bound by the provisions of the relevant Contract.

6. For the purposes of Article XV clause 1 above a breach is considered capable of remedy if the party in breach is capable of complying with all requirements of the provision in question with the exception of performance by a specified time.

7. Upon the termination of any Contract, every other Contract which has been entered into between the parties pursuant to these Terms and Conditions shall continue in full force and effect in accordance with its terms, and these Terms and Conditions shall continue in force to the extent necessary to enable the performance of all such continuing Contracts to be completed.

The rights set out in this clause are without prejudice to any other rights or remedies which either party may have against the other and any accrued rights or liabilities. In addition, termination of any Contract does not affect any obligations which expressly or by implication are intended to come into or continue in force on or after that termination.

#### **Article XVI: Confidentiality**

1. A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors

comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause shall survive termination of the Contract.

#### **Article XVII: Resolution of Disputes by Discussion in Good Faith**

1. The parties shall each use reasonable endeavours to resolve any dispute or difference arising out of or in connection with any Contract (a Dispute):
  - (a) through discussions between Supplier's Director, and the Purchaser's representative failing which;
  - (b) through discussions between Supplier's Managing Director, and the Purchaser's equivalent representative.
2. In the event that any Dispute cannot be settled between the parties during the discussions described in Article XVII clause 1 (a) or (b) above or within 30 calendar days of the Dispute arising the parties agree to attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator and place of mediation shall be nominated by CEDR Solve.
3. Neither party may commence any court proceedings in relation to any Dispute until it has attempted to settle the dispute by mediation, and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
4. Subject to Article XVII clause 5 below, nothing in the forgoing precludes any party from commencing or continuing proceedings in any court at any time:
  - (a) for an order (whether interim or final) to restrain any other party from doing any act or compelling any other party to do any act; or
  - (b) for a judgment for a liquidated sum to which there is no arguable defence; or
  - (c) the purpose of which is to prevent a claim from becoming time-barred due to the expiry of any statutory or contractual limitation period.
5. Article XVII clause 4 shall not permit any party to continue any court proceedings without compliance with Article XVII clauses 1, 2 and 3: (a) if the proceedings were commenced in reliance upon Article XVII clause 4(a) once the court has ordered, or the parties have agreed in writing, that the defendant should have permission to defend; or (b) if the proceedings were commenced in reliance upon Article XVII clause 4(c), once the proceedings have been issued and served.

#### **Article XVIII: Anti-Bribery and Corruption**

1. The Purchaser and the Supplier shall
  - (a) not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK (Relevant Requirements);
  - (b) comply with the Supplier's (as may be in force and as amended and updated from time to time) (Relevant Policies);
  - (c) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and this Agreement, and shall enforce them where appropriate;
  - (d) report to the other party any request or demand for any undue financial or other advantage of any kind received by them in connection with the performance of this Agreement;
  - (e) immediately notify the other party if a foreign public official (as defined in the Bribery Act 2010) becomes an officer or employee of the notifying party or acquires a direct or indirect interest in the notifying party (and that party warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement);
  - (f) ensure that any person associated with that party who is performing services in connection with any Contract does so only on the basis of terms equivalent to those imposed on that party in this clause. Each party shall be directly liable to the other for any breach by its associated persons of any of the Relevant Requirements and/or the Relevant Policies.

#### **Article XIX: Venue and Applicable law**

1. The parties agree that each Contract (including these terms and conditions) and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with each Contract or its subject matter or formation (including non-contractual disputes or claims).

#### **Article XX**

##### **1. Assignment and other dealings.**

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

##### **2. Notices.**

- (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax [or e-mail];
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in the Order Form; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

##### **3. Severance.**

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

(b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

4. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

##### **5. Third parties.**

A person who is not a party to the Contract shall not have any rights to enforce its terms.

##### **6. Variation.**

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

##### **7. Severability Clause.**

The parties intend each provision of each Contract to be severable and distinct from the others. If a provision of any Contract is held to be illegal, invalid or unenforceable, in whole or in part, the parties intend that the legality, validity and enforceability of the remainder of the relevant Contract shall not be affected.