

## TERMS AND CONDITIONS FOR THE OF PURCHASE OF GOODS AND SERVICES

### DEFINITIONS AND APPLICATION

#### 1 DEFINITIONS

1.1 In these Conditions the following definitions apply:

**Business Day:** means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;

**Conditions:** means the Purchaser's terms and conditions of purchase as set out in this document;

**Confidential Information:** means any commercial, financial or technical information, information relating to the Deliverables, documents (including without limitation drawings, plans, diagrams, designs, pictures, schedules and reports), know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by the Purchaser in performing its obligations under, or otherwise pursuant to the Contract;

**Contract:** means the agreement between the Supplier and the Purchaser for the sale and purchase of the Deliverables incorporating these Conditions and the Order;

**Control:** has the meaning given to it in section 1124 of the Corporation Tax Act 2010;

**Deliverables:** means the Goods or Services or both as the case may be;

**Goods:** means the goods and related accessories, spare parts and documentation and other physical material set out in the Order and to be supplied by the Supplier to the Purchaser;

**Intellectual Property Rights:** means copyright, patents, know-how, trade secrets, trademarks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case (a) whether registered or not (b) including any applications to protect or register such rights (c) including all renewals and extensions of such rights or applications (d) whether vested, contingent or future (e) to which the relevant party is or may be entitled, and (f) in whichever part of the world existing;

**Location:** means the address(es) for the delivery of the Goods and performance of the Services as set out in the Order;

**Losses:** means all damages, liabilities, demands, costs, expenses, claims, actions and proceedings (including consequential, direct, indirect, special or incidental loss or punitive damages or loss, legal and other professional fees, costs and expenses, fines, penalties, interest and loss of profit or any other form of economic loss (including loss of reputation));

**Order:** means the Purchaser's order for the Deliverables as set out in the Purchaser's purchase order form and including any documents annexed to it;

**Purchaser:** means the person who buys the Deliverables from the Supplier and whose details are set out in the Order;

**Purchaser Property:** means all plant, equipment, machinery, tools, articles, moulds, documents (including without limitation, drawings, plans, diagrams, designs, pictures, schedules and reports), Confidential Information or any other property whatsoever belonging to the Purchaser which is provided to the Supplier arising out of or in connection with the Contract;

**Price:** has the meaning given in clause 3.1;

**Services:** means the services set out in the Order and to be supplied by the Supplier to the Purchaser;

**Specification:** means the description or specification of the Deliverables set out or referred to in the Order;

**Supplier:** means the person who sells the Deliverables to the Purchaser and whose details are set out in the Order;

**VAT:** means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale the Deliverables.

1.2 In these Conditions, unless the context otherwise requires:

1.2.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);

1.2.2 any clause, schedule or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions;

- 1.2.3 a reference to a 'party' means either the Supplier or the Purchaser and includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however established;
- 1.2.6 words in the singular include the plural and vice versa and any use of genders includes the other genders;
- 1.2.7 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.8 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- 1.2.9 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time and includes all subordinate legislation made under that legislation.

## **2 APPLICATION OF THESE CONDITIONS**

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Purchaser. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Supplier's quotation, sales conditions, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Purchaser otherwise agrees in writing.
- 2.3 Each Order by the Purchaser to the Supplier shall be an offer to purchase the Deliverables subject to these Conditions.
- 2.4 An Order may be withdrawn or amended by the Purchaser at any time before acceptance by the Supplier. If the Supplier is unable to accept an Order, it shall notify the Purchaser promptly.
- 2.5 Acceptance of an Order by the Supplier shall take place when it is expressly accepted or by any other conduct of the Supplier which the Purchaser reasonably considers is consistent with acceptance of the Order.

## **PRICE AND PAYMENT**

### **3 PRICE**

- 3.1 The price for the Deliverables shall be as set out in the Order or, in default of such provision, shall be calculated in accordance with the Supplier's scale of charges as advised by the Supplier and received and acknowledged by the Purchaser before the Order is made.
- 3.2 The Price is fixed and is the entire price payable by the Purchaser to the Supplier for the Deliverables.
- 3.3 Unless otherwise agreed and expressly stated in the Order, the Price includes (without limitation) packaging, packing materials, loading, delivery to and unloading at the Location, unpacking, all appropriate tax and duty (excluding VAT), any installation costs and associated works and any training in relation to the use, storage, handling or operation of the Deliverables.

### **4 PAYMENT**

- 4.1 The Supplier shall invoice the Purchaser for:
  - 4.1.1 the Goods no sooner than completion of delivery of the Goods or, if later, the Purchaser's acceptance of the Goods;

- 4.1.2 the Services no sooner than completion of performance of the Services or, if later, the Purchaser's acceptance of the Services;
- 4.2 Unless otherwise agreed and expressly stated in the Order, the Purchaser shall pay each validly submitted invoice of the Supplier within 60 days following the end of the calendar month of receipt. Time of payment is not of the essence.
- 4.3 VAT shall be charged by the Supplier and paid by the Purchaser at the then applicable rate.

## 5 SET OFF

- 5.1 The Purchaser shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Supplier under the Contract or under any contract which the Purchaser has with the Supplier.
- 5.2 The Supplier shall pay all sums that it owes to the Purchaser under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

# DELIVERABLES

## 6 DELIVERY AND PERFORMANCE

- 6.1 The Goods shall be delivered by the Supplier to the Location on the date(s) specified in the Order. The Goods shall be deemed delivered by the Supplier only on completion of unloading of the Goods at the Location.
- 6.2 The Services shall be performed by the Supplier at the Location on the date(s) specified in the Order. The Services shall be deemed delivered by the Supplier only on completion of the Services at the Location.
- 6.3 The Deliverables shall not be delivered by or performed in instalments unless otherwise agreed in writing by the Purchaser.
- 6.4 Each delivery or performance of the Deliverables shall be accompanied by a delivery note stating:
  - 6.4.1 the date of the Order;
  - 6.4.2 the relevant Purchaser and Supplier details;
  - 6.4.3 the purchase order number and if relevant, the job number;
  - 6.4.4 if Goods, the product numbers and type and quantity of Goods in the consignment;
  - 6.4.5 if Services, the category, type and quantity of Services performed;
  - 6.4.6 any special instructions, handling and other requests; and
  - 6.4.7 in the case of Goods, whether any packaging material is to be returned, in which case the Purchaser shall, after the Goods are unpacked, make them available for collection by the Supplier or return them to the Supplier at the Supplier's expense.
- 6.5 Time of delivery or performance (as the case may be) is of the essence. If the Supplier fails to deliver any of the Goods or perform any of the Services by the date specified in the Order, the Purchaser shall (without prejudice to its other rights and remedies) be entitled at the Purchaser's sole discretion:
  - 6.5.1 to terminate the Contract in whole or in part;
  - 6.5.2 to purchase the same or similar Deliverables from a supplier other than the Supplier;
  - 6.5.3 to recover from the Supplier all costs and losses resulting to the Purchaser, including the amount by which the price payable by the Purchaser to acquire those Deliverables from another supplier exceeds the price payable under the Contract and any loss of profit; and
  - 6.5.4 all or any of the foregoing.

## 7 ACCEPTANCE, REJECTION AND INSPECTION

- 7.1 The Purchaser shall not have accepted, or be deemed to have accepted, the Deliverables until the Acceptance Conditions are fulfilled.
- 7.2 The **Acceptance Conditions** are that:

- 7.2.1 for Goods, the Goods have been delivered to or at the Location.
- 7.2.2 for Services, the Services have been performed at the Location; and
- 7.2.3 the Purchaser has notified the Supplier in writing that the Deliverables have been delivered or performed (as the case may be) in full compliance with the terms of the Contract.
- 7.3 The Purchaser shall be entitled to reject any Deliverables which are not in full compliance with the terms and conditions of the Contract. Any acceptance of defective, late or incomplete Deliverables or any payment made in respect thereof, shall not constitute a waiver of any of the Purchaser's rights and remedies, including its right to reject. If the Goods are rejected due to the volume of the Goods exceeding the tolerances (if any) specified in the Order, the Supplier shall promptly and at its own cost arrange for redelivery of the correct volume.
- 7.4 Any rejected Goods may be returned to the Supplier by the Purchaser at the Supplier's cost and risk. The Supplier shall pay to the Purchaser a reasonable charge for storing and returning any of the Goods over-delivered or rejected.
- 7.5 The Purchaser may require acceptance tests to be performed or to be carried out, at the Purchaser's option, either by the Purchaser or the Supplier, and the results of the tests shall be made available to the Purchaser.
- 7.6 The Purchaser may inspect and test the Deliverables during performance or during manufacture or processing prior to dispatch, and the Supplier shall provide the Purchaser with all facilities reasonably required.
- 7.7 Any inspection or testing of the Deliverables shall not be deemed to be acceptance of the Deliverables or a waiver of any of the Purchaser's rights or remedies, including its right to reject.
- 7.8 The rights of the Purchaser in this Clause 7 are without prejudice to the Purchaser's rights under clause 9.

## 8 TITLE AND RISK

- 8.1 Risk in the Goods shall pass to the Purchaser on delivery and when the Purchaser has accepted the Goods as conforming in every respect with the Contract.
- 8.2 Title to the Goods shall pass to the Purchaser on the sooner of:
  - 8.2.1 payment by the Purchaser for the Goods; or
  - 8.2.2 delivery of the Goods to the Purchaser.
- 8.3 The passing of title shall not prejudice any other of the Purchaser's rights and remedies, including its right to reject.
- 8.4 Neither the Supplier, or any other person, shall have a lien on, right of stoppage in transit or other rights in or to the Goods title to which have vested in the Purchaser or any specifications or materials of the Purchaser, and the Supplier shall ensure that the relevant third parties accept the exclusion of such lien and rights.
- 8.5 The Supplier warrants and represents that it:
  - 8.5.1 has at the time the Contract is made full, clear and unencumbered title to the Goods, and the full, clear and unencumbered right to sell and deliver them to the Purchaser; and
  - 8.5.2 shall hold such title and right to enable it to ensure that the Purchaser shall acquire a valid, unqualified title to the Goods and shall enjoy quiet possession of them.

## LIABILITIES

## 9 WARRANTY

- 9.1 Unless otherwise agreed and stated in the Order, the Supplier warrants and represents that, for a period of 24 months from acceptance (the **Warranty Period**), the Deliverables shall:
  - 9.1.1 conform to any sample, their description and to the Specification;
  - 9.1.2 be free from defects in design, material and workmanship;
  - 9.1.3 comply with all applicable laws, standards and best industry practice;

- 9.1.4 if Goods, be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- 9.1.5 if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, section 13;
- 9.1.6 be fit for purpose and any purpose held out by the Supplier; and
- 9.1.7 any media on which the results of the Services are Supplied shall be free from defects in material and workmanship and of satisfactory quality within the meaning of the Sales of Goods Act 1979.
- 9.2 The Supplier agrees that the approval by the Purchaser of any design or Specification provided by the Supplier shall not relieve the Supplier of any of its obligations under this clause 9.
- 9.3 The Supplier warrants that it understands the Purchaser's business and needs and that a failure by the Supplier to meet its obligations under the Contract may have a critical impact on the Purchaser's business and may result in the Purchaser being in breach of contract with a third party which is not remediable.
- 9.4 The Purchaser may reject the Deliverables that do not comply with clause 9.1 and the Supplier shall, at the Purchaser's option, promptly remedy, repair, replace, correct, re-perform or refund the price of any such Deliverables provided that the Purchaser serves written notice on the Supplier within the Warranty Period that some or all of the Deliverables do not comply with clause 9.1.
- 9.5 The provisions of these Conditions shall apply to any Deliverables that are remedied, repaired, replaced, corrected or re-performed with effect from the date of the delivery or performance of the remedied, repaired, replaced, corrected or re-performed Deliverables.
- 9.6 The Purchaser's rights under these Conditions are in addition to, and do not exclude or modify, the rights and conditions contained in the Supply of Goods and Services Act 1982, section 12 to 16 and the Sale of Goods Act 1979, section 13 to 15.
- 9.7 The Purchaser shall be entitled to exercise its rights under clause 9 regardless of whether the Deliverables have been accepted under the Acceptance Conditions and notwithstanding that the Deliverables were not rejected following their initial inspection under clause 7.3.

## 10 INDEMNITY AND INSURANCE

- 10.1 The Supplier will indemnify and keep indemnified on demand the Purchaser from and against all Losses suffered or incurred by it arising out of or in connection with:
  - 10.1.1 any act or omission by the Supplier that is in breach of the Contract;
  - 10.1.2 the enforcement of the Contract;
  - 10.1.3 any breach of the warranties set out in clause 8 and clause 9;
  - 10.1.4 any claim made against the Purchaser by a third party arising out of or in connection with the Contract, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.
- 10.2 The Supplier shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom insuring the Deliverables and any of the Purchaser's materials in the Supplier's possession against the usual risks, including accident, fire or theft, for their full replacement value until the risk in them passes to the Purchaser, and insuring against all other risks that a prudent supplier should consider reasonable. On request, the Supplier shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Supplier shall on request assign to the Purchaser the benefit of such insurance.

## 11 LIMITATION OF LIABILITY - THE ATTENTION OF THE SUPPLIER IS DRAWN TO THIS CLAUSE

- 11.1 Nothing in the Contract shall limit or exclude the Purchaser's liability for:
  - 11.1.1 death or personal injury caused by its negligence;
  - 11.1.2 fraud or fraudulent misrepresentation;
  - 11.1.3 any other losses which cannot be excluded or limited by applicable law.

- 11.2 Subject to clause 11.1, the Purchaser shall not be liable to the Supplier, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 11.2.1 any direct loss of profits;
  - 11.2.2 any direct loss of anticipated savings;
  - 11.2.3 any indirect loss or damage however caused including without limitation:
    - 11.2.3.1 loss of profit;
    - 11.2.3.2 loss of anticipated profit including loss of profit on contracts;
    - 11.2.3.3 loss of sales or business;
    - 11.2.3.4 loss of opportunity;
    - 11.2.3.5 loss of agreements or contracts;
    - 11.2.3.6 loss of anticipated savings;
    - 11.2.3.7 loss of or damage to goodwill;
    - 11.2.3.8 any other indirect, consequential or special loss.
- 11.3 Subject to clause 11.1, the Purchaser's total liability to the Supplier, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise arising under or in connection with the Contract shall in all cases be limited to 125% of the total Price payable under the Contract.

## 12 PURCHASER'S PROPERTY

- 12.1 The Purchaser's Property shall at all times be and remain the exclusive property of the Purchaser but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Purchaser and shall not be disposed of other than in accordance with the Purchaser's written instructions, nor shall such items be used other than in accordance with the Purchaser's instructions or authorisation.
- 12.2 The Supplier shall promptly return the Purchaser's Property upon notice by the Purchaser (which need not be in writing).
- 12.3 On termination or expiry of the Contract, the Supplier shall immediately return all of the Purchaser's Property. If the Supplier fails to do so then the Purchaser may enter the Supplier's premises and take possession of them.

## OTHER COMMERCIAL MATTERS

## 13 INTELLECTUAL PROPERTY RIGHTS

All specifications provided by the Purchaser and all Intellectual Property Rights in the Deliverables made or performed in accordance with such specifications shall vest and remain at all times the property of the Purchaser and such specifications may only be used by the Supplier as necessary to perform the Contract. The Supplier assigns (or shall procure the assignment) to the Purchaser absolutely, with full title guarantee, all right, title and interest in any such Intellectual Property Rights, and the Supplier shall do all such things and sign all documents necessary in the Purchaser's opinion to so vest all Intellectual Property Rights in the Purchaser, and to enable the Purchaser to defend and enforce such Intellectual Property Rights.

## 14 CONFIDENTIALITY AND ANNOUNCEMENTS

- 14.1 The Supplier shall keep confidential all Confidential Information of the Purchaser and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 14.1.1 any information that was in the public domain at the date of the Contract;
  - 14.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;

- 14.1.3 any information which is independently developed by the Supplier without using information supplied by the Purchaser; or
- 14.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 14.2 This clause shall remain in force for a period of five years from the date of the Contract and, if longer, three years after termination of the Contract.
- 14.3 No announcement or other public disclosure concerning the Contract, or any matters contained in it, shall be made by the Supplier without the Purchaser's prior written consent except as required by law, any court, any governmental, regulatory or supervisory authority or any authority of competent jurisdiction.

## CANCELLATION AND TERMINATION

### 15 CANCELLATION

- 15.1 The Purchaser shall have the right to cancel the Order for the Deliverables or for any part of the Deliverables which have not yet been, in the case of Goods, delivered to, and in the case of Services, performed for, the Purchaser.
- 15.2 In relation to any Order cancelled or part-cancelled under clause 15.1, the Purchaser shall pay for:
  - 15.2.1 in respect of any Goods, that part of the price which relates to the Goods which at the time of cancellation have been delivered to the Purchaser; and
  - 15.2.2 in respect of Goods, the costs of materials which the Supplier has purchased to fulfil the Order for the Goods which cannot be used for other orders or be returned to the Supplier's supplier of those materials for a refund; and
  - 15.2.3 in respect of any Services, such a price as the Purchaser reasonably considers represents the value of the Services that have been supplied with reference to the Price.

### 16 TERMINATION

- 16.1 The Purchaser may terminate the Contract or any other contract which it has with the Supplier at any time by giving notice in writing to the Supplier if:
  - 16.1.1 the Supplier commits a material breach of the Contract and such breach is not remediable;
  - 16.1.2 the Supplier commits a material breach of the Contract which is not remedied within 7 days of receiving written notice of such breach;
  - 16.1.3 any consent, licence or authorisation held by the Supplier is revoked or modified such that the Supplier is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 16.2 The Purchaser may terminate the Contract at any time by giving notice in writing to the Supplier if the Supplier:
  - 16.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
  - 16.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Purchaser reasonably believes that to be the case;
  - 16.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
  - 16.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - 16.2.5 has a resolution passed for its winding up;
  - 16.2.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding up or an administration order is made against it;
  - 16.2.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within 7 days of that procedure being commenced;
  - 16.2.8 has a freezing order made against it;
  - 16.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items;

- 16.2.10 is subject to any events or circumstances analogous to those in clauses 16.2.1 to 16.2.9 in any jurisdiction;
- 16.2.11 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 16.2.1 to 16.2.10 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 16.3 The Purchaser may terminate the Contract at any time if the Supplier undergoes a change of Control or if it is reasonably anticipated that it shall undergo a change of Control within two months.
- 16.4 If the Supplier becomes aware that any event has occurred, or circumstances exist, which may entitle the Purchaser to terminate the Contract under this clause 16, it shall immediately notify the Purchaser in writing.
- 16.5 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 16.6 Clauses which by their intent are to survive the termination or expiry of the Contract will do so.

## GENERAL

### 17 NOTICES

- 17.1 Any notice or other communication given by a party under these Conditions shall:
- 17.1.1 be in writing and in English;
- 17.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by e-mail); and
- 17.1.3 be sent to the relevant party at the address set out in the Contract.
- 17.2 Notices may be given, and are deemed received:
- 17.2.1 by hand: on receipt of a signature at the time of delivery;
- 17.2.2 by Royal Mail Recorded Signed For or first-class post: on the second Business Day after posting;
- 17.2.3 by Royal Mail International Tracked & Signed post: on the fourth Business Day after posting;
- 17.2.4 by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error free transmission;
- 17.2.5 by e-mail: on receipt of a delivery e-mail from the correct address.
- 17.3 Any changes to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 17.1 and shall be effective:
- 17.3.1 on the date specified in the notice as being the date of such change; or
- 17.3.2 if no date is specified, 7 Business Days after the notice is deemed to be received.
- 17.4 All references to time are to the local time at the place of deemed receipt.
- 17.5 This clause does not apply to notices given in legal proceedings or arbitration.

### 18 FURTHER ASSURANCE

The Supplier shall at the request of the Purchaser, and at the Supplier's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

### 19 CUMULATIVE REMEDIES

The rights and remedies provided in the Contract for the Purchaser only are cumulative and not exclusive of any rights and remedies provided by law.



**20      EQUITABLE RELIEF**

The Supplier recognises that any breach or threatened breach of the Contract may cause the Purchaser irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Purchaser, the Supplier acknowledges and agrees that the Purchaser is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

**21      FORCE MAJEURE**

The Purchaser shall not be liable to the Supplier for any failure or delay in performance of the Contract which is caused by an event beyond the reasonable control of the Purchaser including but not limited to any labour disputes between the Purchaser and its employees. In such circumstances, the Purchaser shall be entitled to a reasonable extension of time for performing such obligations.

**22      CORRESPONDENCE**

The Supplier shall quote the Purchaser's purchase order reference on all despatch and consignment notes, advice notes, invoices and any other documentation relating to the performance by the Supplier of its obligations under the Contract.

**23      TIME**

Unless stated otherwise, time is of the essence for any date or period specified in the Contract in relation to the Supplier's obligations only.

**24      ASSIGNMENT**

The Supplier may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Purchaser's prior written consent which it may withhold or delay in its absolute discretion.

**25      NO PARTNERSHIP OR AGENCY**

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than a contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

**26      LANGUAGE**

The language of the Contract is English. All documents, notices, waivers and other written communications between the parties in relation hereto will be in English. If the Contract is translated, the English version will prevail.

**27      VARIATION**

Any amendment or variation to the Contract shall only be made by written agreement (including e-mail) between the parties and, in particular, any amendment or variation to these Conditions shall either be in writing and signed by the parties or, if made by e-mail, must include an express statement of an intention to amend or vary these Conditions which is agreed by the Purchaser.

**28 COMPLIANCE WITH LAW**

The Supplier shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

**29 SEVERANCE**

29.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

29.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision, legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

**30 WAIVER**

30.1 No failure, delay or omission by the Purchaser in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

30.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Purchaser shall prevent any future exercise of any right, power or remedy by the Purchaser.

30.3 A waiver of any term, provision, condition or breach of the Contract by the Purchaser shall only be effective if given in writing and signed by the Purchaser, and then only in the instance and for the purpose for which it is given.

**31 THIRD PARTY RIGHTS**

Except as expressly provided for in the Contract, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

**32 ENTIRE AGREEMENT**

32.1 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

32.2 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

32.3 Nothing in these Conditions purports to limit or exclude liability for fraud.

**33 GOVERNING LAW AND JURISDICTION**

33.1 The Contract and any dispute or claim arising out of, or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with, the laws of England and Wales.

33.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

- 33.3 To the extent permitted by law:
- 33.3.1 the Convention on the International Sale of Goods 1980 and all international domestic legislative (or other) implementations of that Convention; and
  - 33.3.2 the Uniform Laws on International Sales Act 1967, will not apply in relation to this Contract.