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**A-2-Sea Solutions Ltd**

**Terms and Conditions**

**(Sale of Goods and Services – Business to  
Business)**

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A-2-Sea Solutions Limited

Unit 15, Romsey Industrial Estate, Greatbridge Road, Romsey, Hampshire, SO51 0HR, UK

# 1. DEFINITIONS AND INTERPRETATION

## 1.1 In these Conditions the following definitions apply:

<b>Affiliate</b>	means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
<b>Bribery Laws</b>	means the Bribery Act 2010; and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction;
<b>Business Day</b>	means a day other than a Saturday, Sunday or bank or public holiday in England;
<b>Conditions</b>	means the Supplier's terms and conditions of sale set out in this document;
<b>Confidential Information</b>	means any commercial, financial or technical information, information relating to the Deliverables, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by the Customer in performing its obligations under, or otherwise pursuant to the Contract;
<b>Contract</b>	means the agreement between the Supplier and the Customer for the sale and purchase of the Deliverables incorporating these Conditions and the Order;
<b>Control</b>	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company;
<b>Customer</b>	means the person who purchases the Deliverables from the Supplier and whose details are set out in the Order;
<b>Controller</b>	shall have the meaning given to it in the GDPR;
<b>Deliverables</b>	means the Goods or Services or both as the case may be;
<b>Force Majeure</b>	means an event or sequence of events beyond any party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest;

interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required for performance of the Contract; strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay

**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 Customer;

**Intellectual Property Rights**

means copyright, patents, know-how, trade secrets, trade marks, 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 delivery of the Goods and performance of the Services as set out in the Order;

**Order**

means the Customer's order for the Deliverables

**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 Customer;

**Specification**

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

**Supplier**

means A-2-Sea Solutions Limited (Co. Regn. No. 03223673) a private limited company incorporated in England;

**Supplier Personnel**

all employees, officers, staff, other workers, agents and consultants of the Supplier, its Affiliates and any of their sub 3 4 contractors who are engaged in the performance of the Services from time to time; and

**VAT** means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of 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 Customer 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 incorporated or established;
- 1.2.6** a reference to a gender includes each other gender;
- 1.2.7** words in the singular include the plural and vice versa;
- 1.2.8** 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;
- 1.2.9** a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- 1.2.10** without prejudice to the provisions of clause 17, a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of the Customer under the Contract;
- 1.2.11** a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or

thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

## **2. APPLICATION OF THESE CONDITIONS**

- 2.1** These Conditions apply to and form part of the Contract between the Supplier and the Customer. 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 Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing
- 2.3** No variation of these Conditions or to an Order or to the Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Supplier.
- 2.4** Each Order by the Customer to the Supplier shall be an offer to purchase Deliverables subject to these Conditions.
- 2.5** An Order may be withdrawn or amended by the Customer at any time before acceptance by the Supplier. If the Supplier is unable to accept an Order, it shall notify the Customer promptly.
- 2.6** The offer constituted by an Order shall remain in effect and capable of being accepted by the Supplier unless withdrawn or amended by the Customer prior to being accepted by the Supplier.
- 2.7** The Supplier may accept or reject an Order at its absolute discretion. An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the earlier of:
- 2.7.1** the Supplier's written acceptance of the Order; or
  - 2.7.2** the Supplier delivering or performing the Deliverables or notifying the Customer that they are ready to be delivered or performed (as the case may be).
- 2.8** Pursuant to clause 2.8 the Supplier reserves the right to request details of a Customer's security measures in respect of the location the required Goods are to be delivered or located or where the Services are to be performed. The Supplier may at its absolute discretion request adequate security measures are in place at the Customer's own cost before it accepts an Order and may reject the Order until such time as it is satisfied adequate security measures are in place of which it may request proof of.

- 2.9** Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.10** The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply Deliverables and are incapable of being accepted by the Customer.
- 2.11** Marketing and other promotional material relating to the Deliverables are illustrative only and do not form part of the Contract.

## **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 as advised by the Supplier and received and acknowledged by the Customer before the date the Order is made (**Price**).
- 3.2** The Prices are exclusive of:
- 3.2.1** packaging, delivery and insurance which shall be charged in addition at the Supplier's standard rates (unless otherwise confirmed in writing by Supplier), and
  - 3.2.2** VAT.
- 3.3** The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- 3.4** The Supplier may increase the Prices at any time by giving the Customer not less than 15 Business Days' notice in writing provided that the increase does not exceed 5% of the Prices in effect immediately prior to the increase.
- 3.5** Notwithstanding clause 3.4, the Supplier may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Supplier of supplying the relevant Deliverables which exceeds 5% and which is due to any factor beyond the control of the Supplier including but not limited to currency fluctuations, cancellation of an Order by the Customer, alteration or re-scheduling of the Order by the Customer due to the Customer's instructions (or lack of instructions).

## **4. PAYMENT**

- 4.1** The Supplier shall invoice the Customer for the Deliverables at the time of the Order (unless otherwise agreed in writing by the Supplier in the Order).
- 4.2** The Customer shall pay all invoices:

- 4.2.1** in full without deduction or set-off, in cleared funds within 30 days of the date of each invoice (unless otherwise agreed in writing by the Supplier);
- 4.2.2** to the bank account nominated by the Supplier; and
- 4.2.3** in the currency used in the Supplier's quotation or acceptance of an Order
- 4.3** Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
  - 4.3.1** the Supplier may, without limiting its other rights, charge interest on such sums at 5% a year above the Bank of England base rate from time to time in force, and
  - 4.3.2** interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 4.4** If the Supplier exports the Goods to a location outside of the United Kingdom the Customer shall be liable to pay all duties and taxes relating to the export including any withholding tax.

## **5. DELIVERY AND PERFORMANCE**

- 5.1** In respect of the Deliverables:
  - a) Subject to 5.1 (b) the Goods as described in the Specification 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 on arrival of the Goods at the Location. The Customer shall inspect the Goods immediately upon delivery by the Supplier and inform the Supplier as soon as reasonably practicable of any missing Goods or damage to the Goods or defect in respect of the Goods.
  - b) The Supplier hereby reserves the right to make without notice to the Customer such minor modification to the Specification in respect of design or materials relating to the Goods as it may deem necessary or desirable in its professional opinion or through previous experience.
  - c) The Services shall be performed by the Supplier at the Location on the date(s) specified in the Order or such date as may be agreed by the Supplier in writing. The Services shall be deemed delivered by the Supplier only on completion of the performance of the Services at the Location.
- 5.2** The Supplier may deliver or perform the Deliverables in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.3** Time is not of the essence in relation to the performance or delivery of the Deliverables unless agreed in writing by the Supplier at its discretion. In the absence

of such written agreement the Supplier shall use its reasonable endeavours to meet estimated dates for delivery and performance, but any such dates are approximate only.

**5.4** The Supplier reserves the right to request pre-payment in respect of any Order made by the Customer and the Supplier reserves the right to suspend delivery in respect of any Order made by the Customer if the Customer does not pay in full by the due date pursuant to clause 4.3.

**5.5** The Supplier shall not be liable for any delay in or failure of performance caused by:

**5.5.1** the Customer's failure to: (i) make the Location available, (ii) prepare the Location as required for the Deliverables or (iii) provide the Supplier with adequate instructions for performance or delivery,

**5.5.2** Force Majeure.

## **6. RISK**

Risk in the Goods shall pass to the Customer on delivery.

## **7. TITLE**

**7.1** Title to the Goods shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods (including any additional costs of exporting Goods outside of the United Kingdom as described in clause 4.4) which shall include the full cost outstanding of any other goods or services which are the subject of any other contract, order, delivery or instalment between the Supplier and the Customer.

**7.2** Until title to the Goods has passed to the Customer, the Customer shall:

**7.2.1** hold the Goods as bailee for the Supplier;

**7.2.2** store the Goods separately from all other material in the Customer's possession;

**7.2.3** take all reasonable care of the Goods and keep them in the condition in which they were delivered;

**7.2.4** insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Supplier's interest on the policy;

**7.2.5** ensure that the Goods are clearly identifiable as belonging to the Supplier



- 7.2.6** not remove or alter any mark on or packaging of the Goods;
- 7.2.7** inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clauses 16.1.1 to 16.1.4 or 16.2.1 to 16.2.11; and
- 7.2.8** on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.

**7.3** Notwithstanding clause 7.2, the Customer may with the written consent of the Supplier use or resell the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event specified in clauses 16.1.1 to 16.1.4 or 16.2.1 to 16.2.11 has occurred or is likely to occur.

**7.4** If, at any time before title to the Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 16.1.1 to 16.1.4 or 16.2.1 to 16.2.11, the Supplier may:

- 7.4.1** require the Customer at the Customer's expense to re-deliver the Goods to the Supplier; and
- 7.4.2** if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

## **8. WARRANTY**

**8.1** The Supplier gives no warranty (express or implied, unless otherwise confirmed in writing to the Customer) in respect of the Deliverables:

- 8.1.1** conforming in all material respects to any sample, their description and to the Specification;
- 8.1.2** being free from material defects in design, material and workmanship;
- 8.1.3** if Goods, to them being of satisfactory quality within the meaning of the Sale of Goods Act 1979; and

8.1.4 if Services, to them being supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s 13;

8.2 The Customer warrants that it has provided the Supplier with all relevant, full and accurate information as to the Customer's business and needs. All warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982 and ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted.

## 9. ANTI-BRIBERY

9.1 For the purposes of this clause 9 the expressions 'adequate procedures' and 'associated with' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.

9.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use reasonable endeavours to ensure that:

9.2.1 all of that party's personnel;

9.2.2 all others associated with that party; and

9.2.3 all of that party's subcontractors;

involved in performing the Contract so comply.

9.3 Without limitation to clause 9.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

9.4 Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 9.

## 10. ANTI-SLAVERY

10.1 The Customer undertakes, warrants and represents that:

10.1.1 neither the Supplier nor any of its officers, employees, agents or subcontractors has:

- a) committed an offence under the Modern Slavery Act 2015 (a **MSA Offence**); or
- b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

- c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

**10.1.2** it shall comply with the Modern Slavery Act 2015

**10.1.3** it shall notify the Supplier immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or sub-contractors have breached or potentially breached any of the Customer's obligations under clause 10.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Customer's obligations.

**10.2** Any breach of clause 10.1 by the Customer shall be deemed a material breach of the Contract and shall entitle the Supplier to terminate the Contract with immediate effect.

## **11. INDEMNITY AND INSURANCE**

**11.1** The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.

**11.2** In the event an Order is cancelled the Customer shall indemnify the Supplier against all losses (including loss of profit) costs and other expenses and damages (whether direct or consequential) occasioned by such cancellations.

**11.3** The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Customer shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable.

## **12. LIMITATION OF LIABILITY**

**12.1** The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 12.

**12.2** Subject to clauses 12.5 and 12.6, the Supplier's total liability shall not exceed the Price.

**12.3** Subject to clauses 12.5 and 12.6, the Supplier shall not be liable for consequential, indirect or special losses.

**12.4** Subject to clauses 12.5 and 12.6, the Supplier shall not be liable for any of the following (whether direct or indirect):

- 12.4.1** loss of profit;
- 12.4.2** loss of or corruption to data;
- 12.4.3** loss of use;
- 12.4.4** loss of production;
- 12.4.5** loss of contract;
- 12.4.6** loss of opportunity;
- 12.4.7** loss of savings, discount or rebate (whether actual or anticipated);
- 12.4.8** harm to reputation or loss of goodwill.
- 12.4.9** injury or damage caused by incorrect use of the Goods.

**12.5** The limitations of liability set out in clauses 12.2 to 12.4 shall not apply in respect of any indemnities given by either party under the Contract.

**12.6** Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:

- 12.6.1** death or personal injury caused by negligence;
- 12.6.2** fraud or fraudulent misrepresentation;
- 12.6.3** any other losses which cannot be excluded or limited by applicable law.

## **13. INTELLECTUAL PROPERTY**

**13.1** The Supplier hereby grants the Customer with a non-exclusive licence to use the Intellectual Property Rights owned by the Supplier and attaching to the Deliverables to the extent that such Intellectual Property Rights are necessary for the Customer's use and enjoyment of such Deliverables and for the avoidance of doubt the Supplier shall remain the full legal and beneficial owner of such Intellectual Property Rights.

**13.2** In the event that the Customer breaches the Contract the Supplier may terminate any licence granted pursuant to clause 13.1 with immediate effect upon notice in writing.

## **14. CONFIDENTIALITY AND ANNOUNCEMENTS**

- 14.1** The Customer and the Supplier shall each keep confidential all Confidential Information of the other and of any Affiliate of the Supplier or the Customer 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 which 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 Customer without using information supplied by the Supplier or by any Affiliate of the Supplier; 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** The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority or with express written permission from the Supplier.

## **15. FORCE MAJEURE**

- 15.1** A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
- 15.1.1** promptly notifies the other of the Force Majeure event and its expected duration; and
  - 15.1.2** uses best endeavours to minimise the effects of that event.
- 15.2** If, due to Force Majeure, a party:
- 15.2.1** is or shall be unable to perform a material obligation; or
  - 15.2.2** is delayed in or prevented from performing its obligations for a continuous period exceeding 60 days;

the other party may, within 30 days, terminate the Contract on immediate notice.

## **16. TERMINATION**

- 16.1** The Supplier may terminate the Contract at any time (and at no cost to the Supplier) by giving notice in writing to the Customer if:
- 16.1.1** the Customer commits a material breach of the Contract and such breach is not remediable;
  - 16.1.2** the Customer commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;
  - 16.1.3** the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after the Supplier has given notification that the payment is overdue; or
  - 16.1.4** any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled
  - 16.1.5** at any time the Supplier is of the reasonable opinion that the Customer is in breach of clause 2.8 of these Conditions by failing to either produce proof that adequate security measures are in place or such security measures are no longer adequate.
- 16.2** The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- 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 Supplier 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 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 seven 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 in the reasonable opinion of the Supplier 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** Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

## **17. DISPUTE RESOLUTION**

- 17.1** Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 17.
- 17.2** The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 17.3** The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
- 17.3.1** Within seven days of service of the notice, the contract managers of the parties shall meet in person (if reasonably practicable to do so) to discuss the dispute and attempt to resolve it but if meeting in person is not logistically reasonable due to the cost or distance of travel the contract managers may use a more appropriate medium to discuss the dispute including but not limited to conference calling.
  - 17.3.2** If the dispute has not been resolved within seven days of the first meeting of the contract managers, then the matter shall be referred to the managing directors (or persons of equivalent seniority). The managing directors (or equivalent) shall meet within seven days to discuss the dispute and attempt to resolve it.

- 17.4** The specific format for the resolution of the dispute under clause 17.3.1 and, if necessary, clause 17.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
- 17.5** If the dispute has not been resolved within 14 days of the first meeting of the managing directors (or equivalent) under clause 17.3.2 then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 17.6** Until the parties have completed the steps referred to in clauses 17.3 and 17.5, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts or emergency arbitrator relief or may take action in respect of any amount of the Price that is overdue.

## **18. NOTICES**

- 18.1** Any notice given by a party under these Conditions shall:
- 18.1.1** be in writing and in English;
  - 18.1.2** be signed by, or on behalf of, the party giving it
  - 18.1.3** be sent to the relevant party at the address set out in the Contract
- 18.2** Notices may be given, and are deemed received:
- 18.2.1** by hand: on receipt of a signature at the time of delivery;
  - 18.2.2** by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;
  - 18.2.3** by post: at 9.00 am on the fourth Business Day after posting; and
  - 18.2.4** by email: on receipt of a delivery email from the correct address.
- 18.3** Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 18.1 and shall be effective:
- 18.3.1** on the date specified in the notice as being the date of such change; or
  - 18.3.2** if no date is so specified, four Business Days after the notice is deemed to be received.
- 18.4** All references to time are to the local time at the place of deemed receipt.



**18.5** This clause does not apply to notices given in legal proceedings or arbitration.

## **19. CUMULATIVE REMEDIES**

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

## **20. TIME**

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

## **21. FURTHER ASSURANCE**

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

## **22. ENTIRE AGREEMENT**

**22.1** 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.

**22.2** 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.

**22.3** Nothing in these Conditions purports to limit or exclude any liability for fraud.

## **23. VARIATION**

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, the Supplier.

## **24. ASSIGNMENT**

The Supplier may assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Customer's prior written consent,

## **25. SET OFF**

**25.1** The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract.

- 25.2** The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

## **26. 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 the 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.

## **27. EQUITABLE RELIEF**

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

## **28. SEVERANCE**

- 28.1** 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.
- 28.2** 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.

## **29. WAIVER**

- 29.1** No failure, delay or omission by the Supplier 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.
- 29.2** No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.

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

## **30. COMPLIANCE WITH LAW**

- 30.1** The Customer 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, visas, permits and authorities as are required from time to time (including any international requirements if applicable to Goods being exported outside of the United Kingdom) to perform its obligations under or in connection with the Contract.
- 30.2** The parties acknowledge that any products, software and technical information (including, but not limited to, services and training) provided by either party under the Contract are or may be subject to United States and/or United Kingdom laws relating to export (“Export Laws”), and any use or transfer of such products, software and technical information must be permitted or authorised under such Export Laws. The parties agree that they will not use, distribute, transfer or transmit the products, software or technical information (even if incorporated into other products) except in compliance with such Export Laws. If requested by a party, the other party agrees to sign all necessary export related documents as may be required to comply with such Export Laws.

## **31. CONFLICTS WITHIN CONTRACT**

If there is a conflict between the terms contained in the Conditions and the terms of the Order, terms of the Conditions shall prevail.

## **32. COSTS AND EXPENSES**

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

## **33. THIRD PARTY RIGHTS**

- 33.1** Except as expressly provided for in clause 33.2, 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.
- 33.2** Any Affiliate of the Supplier shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

## **34. GOVERNING LAW**

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.

## **35. JURISDICTION**

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)

