

## Terms and Conditions of Purchase

### 1. DEFINITIONS

In these terms and conditions:

**"AFFILIATE"** in relation to a PARTY, shall mean those corporations, companies and other legal entities which, control, are directly or indirectly controlled by, or are under common control with, that PARTY.

**"CONDITIONS"** mean the standard terms and conditions of purchase set out in this document and any special terms included on the PURCHASE ORDER.

**"CONFIDENTIAL INFORMATION"** has the meaning given in paragraph 10.

**"CONTRACT"** means the contract between the SUPPLIER and the PURCHASER for the WORK, comprising the PURCHASE ORDER[S] issued by the PURCHASER, the CONDITIONS and the SPECIFICATIONS and the SUPPLIER's acceptance of the PURCHASE ORDER.

**"CONTROL"** in relation to a body corporate, means the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person either (a) by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body corporate; or (b) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating that body corporate, and "controlled by" and "under common control with" shall be interpreted accordingly.

**"DELIVERABLES"** any outputs of the Services and any other documents, products and materials provided by the SUPPLIER to the PURCHASER in relation to the SERVICES.

**"DELIVERY ADDRESS"** means the address for delivery stated in the PURCHASE ORDER.

**"DELIVERY DATE"** means the delivery date or period for delivery specified in the PURCHASE ORDER.

**"ENCUMBRANCE"** means any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, hypothecation, security interest, title retention or other security agreement or arrangement.

**"FORCE MAJEURE EVENT"** has the meaning given to it in paragraph 17.

**"GOODS"** means the goods and materials to be supplied by the SUPPLIER to the PURCHASER described in the PURCHASE ORDER.

**"INTELLECTUAL PROPERTY RIGHTS"** means all patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted such rights and all similar or equivalent rights or forms of protection which subsist in any part of the world.

**"PARTIES"** means the SUPPLIER and PURCHASER and **"PARTY"** means either of them.

**"PERSON"** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

**"PRICE"** means the total price of the WORK as stated in the PURCHASE ORDER.

**"PURCHASER"** means Balmoral Comtec Limited, Balmoral Park, Loirston, Aberdeen, AB12 3GY Scotland, a company registered in Scotland (registered number SC301819) [and any other AFFILIATE of Balmoral Comtec Limited that is a party to the CONTRACT].

**"PURCHASER MATERIALS"** means all materials and equipment, tools, drawings, SPECIFICATIONS, and data supplied by the PURCHASER to the SUPPLIER

**"PURCHASE ORDER"** means a PURCHASER-generated document that constitutes an offer by the PURCHASER to purchase the WORK in accordance with the SPECIFICATIONS, subject to the CONDITIONS.

**"SERVICES"** means the services (if any) to be provided by the SUPPLIER to the PURCHASER described in the PURCHASE ORDER.

**"SUPPLIER"** means the person or other legal entity named in the PURCHASE ORDER.

**"SPECIFICATIONS"** means all plans, drawings, data and other technical information relating to the WORK and all safety and technical standards applicable to the WORK comprised within, attached to, or referenced in, the PURCHASE ORDER.

**"SUBCONTRACT"** means any contract between the SUPPLIER and any other person for the performance of the WORK.

**"SUBCONTRACTOR"** means any party (other than the SUPPLIER) to a SUBCONTRACT.

**"WORK"** means all GOODS and/or SERVICES to be provided under the CONTRACT.

**"WRITING"** or **"WRITTEN"** includes e-mail, facsimile transmission and comparable means of communication.

## **2. BASIS OF CONTRACT**

- 2.1 The CONDITIONS are the only terms and conditions upon which the PURCHASER is prepared to deal with the SUPPLIER and apply to the exclusion of any other terms or conditions that the SUPPLIER seeks to impose or incorporate, or which are implied by trade custom, practice or course of dealing. No other terms and conditions endorsed upon, delivered with or contained in the SUPPLIER'S quotation, acknowledgement or acceptance of PURCHASE ORDER, specification or similar document will form part of the CONTRACT and the SUPPLIER waives any right it otherwise might have to rely on such terms and conditions.
- 2.2 Each PURCHASE ORDER constitutes an offer by the PURCHASER to purchase the WORK in accordance with the CONDITIONS and the SPECIFICATIONS.
- 2.3 The PURCHASE ORDER shall be deemed to be accepted on the earlier of: (i) the SUPPLIER issuing a written acceptance of the PURCHASE ORDER; and (ii) the SUPPLIER doing any act consistent with fulfilling the order.
- 2.4 Any variation to these CONDITIONS shall be inapplicable unless agreed in writing by the PURCHASER.

## **3. INSPECTION AND TESTING**

- 3.1 The PURCHASER shall be entitled to:
  - (i) inspect and test the WORK during its manufacture, processing or storage at the SUPPLIER'S premises or at the premises of any SUBCONTRACTOR at any reasonable time prior to delivery and the SUPPLIER shall afford to the PURCHASER all such facilities as may be reasonably required by the PURCHASER; and
  - (ii) require that one or more samples be submitted for inspection and testing prior to despatch of the WORK.
- 3.2 Such inspection and testing shall not constitute acceptance of the WORK by the PURCHASER and shall not reduce or otherwise affect the SUPPLIER'S obligations under the CONTRACT.
- 3.3 If as a result of any inspection or testing carried out in accordance with paragraphs 3.1(i) and (ii) the PURCHASER is not satisfied that the WORK conforms or will conform in all respects with the CONTRACT, and the PURCHASER so informs the SUPPLIER within 7 working days of such inspection or testing, the SUPPLIER shall take such steps as are necessary to ensure compliance.
- 3.4 In the event that the WORK or any part of the WORK fails inspection and/or testing, the PURCHASER reserves the right to charge the SUPPLIER any costs incurred by the PURCHASER for subsequent re-inspection and/or testing in respect of travel and accommodation.

- 3.5 The PURCHASER shall be entitled to reject any of the WORK delivered which is not in conformity with the CONTRACT, and shall not be deemed to have accepted any of the WORK until the PURCHASER has had a reasonable time to inspect the WORK following delivery.
- 3.6 WORK delivered in accordance with the CONTRACT is accepted contingently upon it being in full conformity with the CONTRACT and therefore delivery is accepted subject to the PURCHASER's inspection and approval of the WORK at the DELIVERY ADDRESS. Such inspection and approval shall not prejudice the PURCHASER's rights in respect of defects: (i) which could be observed only after use or close inspection which may not take place until a time subsequent to delivery; or (ii) which may not be apparent on inspection at the time of delivery, but which are discovered at a later date by the PURCHASER.

#### **4. DELIVERY**

- 4.1 The SUPPLIER shall deliver the WORK to the DELIVERY ADDRESS during normal working hours unless specified otherwise in the PURCHASE ORDER. In the event that the SUPPLIER delivers the WORK to the wrong address, the PURCHASER reserves the right to refuse to accept delivery at that address and/or to charge the SUPPLIER for the costs of subsequent transfer.
- 4.2 Time is of the essence. The SUPPLIER shall deliver the WORK on the DELIVERY DATE. If the SUPPLIER fails to deliver the WORK on the DELIVERY DATE, the provisions of paragraph 4.8 shall apply.
- 4.3 In the event of delivery being delayed by a FORCE MAJEURE EVENT, the SUPPLIER shall give the PURCHASER notice in writing immediately of such delay and the PURCHASER shall grant the SUPPLIER such extension of time as may be reasonable in the circumstances.
- 4.4 SUPPLIER shall properly pack, protect and secure the WORK, and all despatches must prominently bear the PURCHASE ORDER number. The PURCHASER shall not be obliged to accept delivery in instalments. The SUPPLIER shall save, defend, indemnify and hold harmless the PURCHASER from and against any damage or loss sustained to the WORK while it is in transit to the DELIVERY ADDRESS.
- 4.5 If for any reason the PURCHASER is unable to accept delivery of the WORK on the DELIVERY DATE, the SUPPLIER shall at its own expense store, insure and safeguard the WORK and take all steps to prevent its deterioration until delivery takes place.
- 4.6 The SUPPLIER shall provide the PURCHASER with any instructions or other information required to enable the PURCHASER to accept delivery of the WORK upon acceptance of the PURCHASE ORDER.
- 4.7 Delivery of the WORK shall occur no later than the DELIVERY DATE. If the SUPPLIER is unable to deliver the WORK on the DELIVERY DATE, SUPPLIER shall notify the PURCHASER thereof immediately, stating the reasons for the delay, detailing the steps being taken to mitigate further delays and the new anticipated date for delivery of the WORK. Should the SUPPLIER fail to make delivery on DELIVERY DATE, with exception of delay attributable to a Force Majeure Event, liquidated damages shall be due and payable by the SUPPLIER in accordance with paragraph 4.8.
- 4.8 Unless otherwise specified in the PURCHASE ORDER, CONTRACT, or any other written agreement entered into between the SUPPLIER and the PURCHASER, Liquidated damages will be payable as follows:
- (i) two percent (2%) of the line(s) value of the goods/services delivered late between Two (2) to Five (5) calendar days
  - (ii) four percent (4%) of the line(s) value of the goods/services delivered late between Six (6) to ten (10) calendar days.
  - (iii) six percent (6%) of the line(s) value of the goods/services delivered late between Eleven (11) to Fourteen (14) calendar days.
  - (iv) 10percent (10%) of the line(s) value of the goods/services delivered late that are greater than Fifteen (15) calendar days.

#### **5. TITLE AND RISK**

- 5.1 Subject to paragraph 5.3 below, title to the WORK shall pass to the PURCHASER on the earlier of:

- (i) payment of the PRICE in accordance with the payment terms set out in the PURCHASE ORDER, or;
  - (ii) on delivery of the WORK to the DELIVERY ADDRESS, but without prejudice to any right of rejection which may accrue to the PURCHASER under the CONTRACT.
- 5.2 Notwithstanding the passing of title, the risk of damage or loss of the WORK shall remain with the SUPPLIER until the later of:
- (i) acceptance of the WORK by the PURCHASER, or;
  - (ii) delivery of the WORK to the DELIVERY ADDRESS.
- 5.3 If the SUPPLIER postpones delivery at the request of the PURCHASER pursuant to paragraph 4.5, title in the WORK shall pass to the PURCHASER seven days (7) after the date of receipt of notification from the SUPPLIER that the WORK is due and ready for delivery, or on such other date as may be agreed in writing between the PARTIES, but the WORK shall remain at the SUPPLIER'S risk until delivery to the DELIVERY ADDRESS.
- 5.4 PURCHASER MATERIALS and all rights in the PURCHASER MATERIALS are and shall remain the exclusive property of the PURCHASER.

## **6. PRICE AND PAYMENT**

- 6.1 Subject to the following paragraphs, the PURCHASER shall pay the SUPPLIER the PRICE in accordance with the payment terms set out in the PURCHASE ORDER.
- 6.2 The Price shall be exclusive of any applicable Value Added Tax ("VAT"), which shall be payable by the Purchaser subject to receipt of a valid VAT invoice, but inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the WORK to the DELIVERY ADDRESS, and any taxes, duties or levies other than VAT.
- 6.3 The PURCHASER reserves the right to set off against the PRICE any sums owed by the SUPPLIER to the PURCHASER.
- 6.4 Unless otherwise specified in the PURCHASE ORDER, the PURCHASER shall pay for the WORK within the forty-five (45) days following the end of the month of receipt of the SUPPLIER'S correctly prepared and adequately supported invoice for the WORK.
- 6.5 The SUPPLIER must quote the PURCHASE ORDER reference on all invoices and send them to the address indicated on the PURCHASE ORDER. The PURCHASER will return invoices which have no PURCHASE ORDER reference.
- 6.6 The PURCHASER may withhold payment in whole or in part for any invoices containing incorrect or unsubstantiated costs. Payment of the undisputed part of the invoice shall be made within the forty-five (45) days following the end of the month of the receipt of a credit note from the SUPPLIER for the value of the disallowed costs.
- 6.7 Payment by the PURCHASER shall be without prejudice to any claims or rights which it may have against the SUPPLIER and shall not constitute any admission by the PURCHASER as to the proper performance by the SUPPLIER of its obligations under the Contract.

## **7. SUPPLIER RESPONSIBILITIES**

- 7.1 The SUPPLIER shall ensure that the GOODS shall:
- (i) be of satisfactory quality, free from latent defects and fit for the purpose for which the GOODS are designed to fulfil, or where no design is specified, are customarily used, and in this respect the PURCHASER is relying on the SUPPLIER'S skill and judgment;
  - (ii) conform in all respects with the terms of the CONTRACT;
  - (iii) where they are manufactured products, be free from defects in design, materials and workmanship; and

- (iv) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the GOODS.
- 7.2 The SUPPLIER shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the CONTRACT.
- 7.3 The SUPPLIER shall ensure that the PURCHASER shall:
  - (i) be provided with adequate instructions to enable the PURCHASER to make full use of the GOODS; and
  - (ii) acquire the GOODS free from any encumbrance.
- 7.4 The SUPPLIER shall ensure that:
  - (i) the SERVICES and the DELIVERABLES conform in all respects with the CONTRACT;
  - (ii) the DELIVERABLES shall be fit for any purpose expressly or implicitly made known to the SUPPLIER by the PURCHASER;
  - (iii) the SERVICES are performed with the highest level of care, skill and diligence in accordance with best practice in the SUPPLIER'S industry, profession or trade; and
  - (iv) the DELIVERABLES, and all goods, materials, standards and techniques used in providing the SERVICES, are of best quality and free from defects in workmanship, installation and design.
- 7.5 Where PURCHASER MATERIALS are provided, the SUPPLIER shall keep the PURCHASER MATERIALS in safe custody at its own risk, maintain them in good condition until returned to the PURCHASER and not dispose or use the same other than in accordance with the PURCHASER'S written instructions or authorisation. For the avoidance of doubt the SUPPLIER shall be responsible for, and keep the PURCHASER indemnified from and against all damage to or loss of the PURCHASER MATERIALS, howsoever caused, while they are in the SUPPLIER'S custody, and if requested by the PURCHASER will mark the PURCHASER MATERIALS as being the property of the PURCHASER.

## **8. REMEDIES**

- 8.1 If the WORK is not delivered on the DELIVERY DATE, or does not comply with the undertakings set out in paragraph 7, then without limiting any of its other rights or remedies, and whether or not it has accepted the WORK, the PURCHASER may exercise any one or more of the following remedies:
  - (i) seek Liquidated Damages in accordance with paragraph 4.8
  - (ii) terminate the Contract;
  - (iii) reject the WORK (in whole or in part) and return it to the SUPPLIER at the SUPPLIER'S own risk and expense;
  - (iv) require the SUPPLIER to repair, replace or re-perform the rejected WORK or to provide a full refund of the price of the rejected WORK (if paid);
  - (v) refuse to accept any subsequent delivery of the WORK that the SUPPLIER attempts to make;
  - (vi) recover from the SUPPLIER any costs incurred by the PURCHASER in obtaining substitute Goods or Services from a third party; and
  - (vii) claim damages for any other costs, losses or expenses incurred by the PURCHASER in obtaining substitute or replacement WORK.
- 8.2 The WORK or part of the WORK so replaced or repaired in accordance with paragraph 8.1(iv) shall be subject to the provisions of the CONTRACT in the same manner as the WORK originally provided.
- 8.3 Without prejudice to any of the PURCHASER'S remedies or rights (whether contractual, statutory or otherwise), and notwithstanding any inspection and acceptance of the WORK by the PURCHASER, the SUPPLIER shall guarantee the WORK for a period of twenty-four (24) months from the date of delivery to PURCHASER, and shall promptly repair or replace any defective WORK or defective part of the WORK at the SUPPLIER'S sole cost and expense within the guarantee period.

8.4 For the avoidance of doubt, nothing in this CONTRACT shall operate to exclude any warranty, guarantee or condition on the part of the SUPPLIER as to quality, fitness for purpose or any other matter, implied by law, custom of the trade or otherwise all of which warranties, guarantees and conditions shall accordingly apply unless expressly excluded by the terms of the CONTRACT.

8.5 The PURCHASER's rights and remedies under these CONDITIONS are in addition to its rights and remedies implied by statute and common law.

## **9. INDEMNITIES**

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

- (i) any claim made against the PURCHASER for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the supply or use of the WORK, to the extent that the claim is attributable to the acts or omissions of the SUPPLIER, its employees, agents or subcontractors;
- (ii) any claim made against the PURCHASER by a third party for death, personal injury or damage to property arising out of or in connection with defects in the WORK, to the extent that the defects in the WORK are attributable to the acts or omissions of the SUPPLIER, its employees, agents or subcontractors; and
- (iii) any claim made against the PURCHASER by a third party arising out of or in connection with the supply of the WORK, 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. CONFIDENTIALITY**

10.1 In this paragraph 10, **CONFIDENTIAL INFORMATION** means any information (however recorded or preserved) which either PARTY ("the Receiving Party") may have or acquire (whether before or after the date of the CONTRACT) in relation to the customers, suppliers, business, assets or affairs, plans, intentions or market opportunities or the operations, processes, product information, know-how, designs, trade secrets or software of the other PARTY ("the Disclosing Party"), as a consequence of the negotiations relating to the CONTRACT or the performance of the CONTRACT, but excludes the information in paragraph 10.2.

10.2 Information is not CONFIDENTIAL INFORMATION if:

- (i) it is or becomes generally available to the public (other than as a result of disclosure by the Receiving Party in breach of its obligations in terms of this paragraph 10); or
- (ii) the Receiving Party can establish to the reasonable satisfaction of the Disclosing Party that it found out the information from a person not connected with the Disclosing Party and that such person is not under any obligation of confidence in respect of the information; or
- (iii) the Receiving Party can establish to the reasonable satisfaction of the Disclosing Party that the information was known to the Receiving Party before the date of the CONTRACT and that it was not under any obligation of confidence in respect of the information; or
- (iv) the Parties agree in writing that it is not confidential.

10.3 Each PARTY shall at all times keep confidential (and ensure that its employees, agents, sub-contractors and AFFILIATES, and the employees, agents and subcontractors of its AFFILIATES shall keep confidential) any CONFIDENTIAL INFORMATION of the other PARTY and shall not use such CONFIDENTIAL INFORMATION except for the purpose of exercising or performing its rights and obligations under the CONTRACT, and shall not disclose such CONFIDENTIAL INFORMATION except:

- (i) with the written consent of the DISCLOSING PARTY; or

- (ii) as may be required by law or any governmental or other regulatory body or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permissible to do so, it gives the Disclosing Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this paragraph, it takes into account the reasonable requests of the Disclosing Party in relation to the content of such disclosure.

10.4 On completion or termination of the CONTRACT, each PARTY shall:

- (i) return to the other PARTY all documents and materials (and any copies) containing, reflecting, incorporating or based on the other PARTY's CONFIDENTIAL INFORMATION; and
- (ii) erase all the other PARTY's CONFIDENTIAL INFORMATION from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable).

10.5 The provisions of this paragraph 10 shall continue to apply after the completion or termination of the CONTRACT.

## **11. INTELLECTUAL PROPERTY RIGHTS**

11.1 The PURCHASER and its licensors shall retain ownership of all INTELLECTUAL PROPERTY RIGHTS in the PURCHASER MATERIALS

11.2 The PURCHASER grants to the SUPPLIER a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the PURCHASER MATERIALS for the term of the CONTRACT for the purpose of providing the SERVICES to the PURCHASER.

11.3 Subject to paragraph 11.5, the SUPPLIER and its licensors shall retain ownership of all INTELLECTUAL PROPERTY RIGHTS in the DELIVERABLES, excluding the PURCHASER MATERIALS

11.4 The SUPPLIER grants to the PURCHASER, or shall procure the direct grant to the PURCHASER of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence to copy and modify the DELIVERABLES (excluding PURCHASER MATERIALS) for the purpose of receiving and using the SERVICES and the DELIVERABLES in its business; and the PURCHASER may sub-licence the rights as granted in this paragraph 11.4;

- (i) to its AFFILIATES and customers;
- (ii) subject to their entering into appropriate confidentiality undertakings, to third parties for the purpose of the PURCHASER's receipt of services similar to the SERVICES.

11.5 In the event that INTELLECTUAL PROPERTY RIGHTS arise in respect of DELIVERABLES which have been created by the SUPPLIER based wholly or mainly on information provided by the PURCHASER, the SUPPLIER assigns to the PURCHASER, with full title guarantee and free from any third-party rights, all INTELLECTUAL PROPERTY RIGHTS in the DELIVERABLES. In such an event the SUPPLIER shall:

- (i) Obtain waivers of all moral rights in the DELIVERABLES to which any individual is now or may be at any time in the future entitled under Chapter IV of Part I of the Copyright and Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction; and
- (ii) The SUPPLIER shall, promptly at the PURCHASER's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the PURCHASER may from time to time require for the purpose of securing for the PURCHASER all right, title and interest in and to the INTELLECTUAL PROPERTY RIGHTS assigned to the PURCHASER

## **12. TERMINATION**

12.1 Without limiting its other rights or remedies, the PURCHASER shall be entitled to terminate the CONTRACT with immediate effect and without liability to the SUPPLIER by giving notice to the SUPPLIER if:-

- (i) the SUPPLIER takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose

of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or

- (ii) the SUPPLIER takes any step or action in connection with the SUPPLIER being made bankrupt, entering into any composition or arrangement with his creditors, having a receiver appointed to any of its assets, or ceasing to carry on its business or if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (iii) the SUPPLIER suspends, or threatens to suspend, or ceases, or threatens to cease, to carry on all or a substantial part of its business; or
- (iv) the SUPPLIER's financial position deteriorates to such an extent that in the PURCHASER's opinion it's capability to adequately fulfil its obligations under the CONTRACT has been placed in jeopardy; or
- (v) where applicable, the maximum amount of liquidated damages has been claimed or deducted and the WORK still has not been delivered;
- (vi) the SUPPLIER commits a material breach of any term of the CONTRACT and (if such breach is remediable) fails to remedy that breach within thirty (30) days of the SUPPLIER being notified in writing to do so.

12.2 The PURCHASER may terminate the CONTRACT in whole or in part at any time before delivery with immediate effect by giving the SUPPLIER written notice, whereupon the SUPPLIER shall discontinue all work on the CONTRACT. The PURCHASER shall pay the SUPPLIER fair and reasonable compensation for any work in progress on the WORK at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

The PURCHASER shall have no further liability to the SUPPLIER as a result of any such termination.

12.3 Termination of the CONTRACT, howsoever arising, shall not affect any of the PARTIES' rights and remedies that have accrued as at termination.

### **13. NOTICES**

13.1 All notices, demands, or other communications under the CONTRACT shall be given or made in writing and shall be delivered by hand, sent by first class post or other next working day delivery service, commercial courier or electronic mail addressed to the other PARTY at the address set out in the PURCHASE ORDER or at such other address as may be designated by notice from such other PARTY.

13.2 Any notice, demand or other communication shall be deemed to have been received: if delivered by hand, when left at the address referred to in paragraph 12.1; if sent by first class post, on the second working day after the date of 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 email on the next working day following transmission.

13.3 This paragraph 12 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

### **14. SPARES SUPPORT**

14.1 The SUPPLIER shall keep spare parts for the WORK for a period of ten (10) years from the date of the PURCHASE ORDER, or for the guarantee period and any re-guarantee periods, whichever is the later. Where the WORK or spare parts thereof are to be made obsolete, the SUPPLIER will give the PURCHASER at least twelve (12) months' notice in writing.

### **15. ASSIGNMENT/SUB-CONTRACTING**

15.1 The PURCHASER may at any time assign, transfer or deal in any other manner with any or all of its rights or obligations under the CONTRACT.

15.2 The SUPPLIER may not assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights or obligations under the CONTRACT or any part of it without the prior written consent of the PURCHASER.



15.3 The SUPPLIER may not subcontract any or all of its rights or obligations under the CONTRACT without the prior written consent of the PURCHASER, which shall not be unreasonably withheld. If the PURCHASER consents to any subcontracting by the SUPPLIER, the SUPPLIER shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

## **16. AMENDMENTS**

16.1 No amendment, interpretation or waiver of any of the provisions of the CONTRACT shall be effective unless made in writing and signed by the authorised representatives of the PURCHASER and the SUPPLIER.

## **17. ENFORCEMENT**

17.1 The failure to enforce or to require the performance at any time or times of any of the provisions of the CONTRACT shall not be construed to be a waiver of such provision, and shall not affect either the validity of the CONTRACT or any part thereof or the right of any party thereafter to enforce each and every provision in accordance with the terms of the CONTRACT

## **18. FORCE MAJEURE**

18.1 Neither PARTY shall be liable to the other for any loss or damage which may be suffered due to any unforeseeable cause beyond its reasonable control (each a "FORCE MAJEURE EVENT"), including:

- (i) any act of God; or
- (ii) earthquakes, floods, drought, fires, explosions and/or other natural, physical disasters, but not including severe weather; or
- (iii) failure or shortage of power supplies at a national or international level; or
- (iv) the act or omission of any government, war, military operations, acts of terrorism or riot.

18.1 A FORCE MAJEURE EVENT shall not include any strike or lock-out, trade dispute or labour disturbance or the delay or failure in manufacture, production or supply by third parties of the Goods or Services.

18.2 In the event of a FORCE MAJEURE EVENT, the PARTY that is or may be delayed in performing the CONTRACT shall notify the other PARTY without delay giving the full particulars thereof and shall use all reasonable endeavours to remedy the situation without delay

## **19. DATA PROTECTION**

19.1 In this paragraph, in addition to the terms defined in paragraph 1, the following expressions shall have the following meanings:

"PERSONAL DATA" means information defined as such in the Data Protection Act 1998 or information treated as personal data under any other law or regulation applicable to the information and subsequent enactment.

"APPLICABLE DATA PROTECTION LAW" means the EU Data Protection Directive (95/46/EC) or other applicable law or regulation as they may be amended from time to time and subsequent enactment.

19.2 The PARTIES acknowledge that in providing the WORK, the SUPPLIER may process PERSONAL DATA, and/or disclose it to third parties. The SUPPLIER shall have in place adequate technical and organisational security measures so that the confidentiality of this processing complies with APPLICABLE DATA PROTECTION LAW.

## **20. THIRD PARTY RIGHTS**

20.1 No person other than a PARTY and its permitted assignees shall have any right to enforce any of its terms.

## **21. ENTIRE AGREEMENT**

21.1 The CONTRACT represents the entire understanding between the PARTIES in relation to its subject matter and supersedes all prior agreements, understandings or arrangements made by either party, whether oral or written.

21.2 Where special conditions specified by the PURCHASER are stated on the face of the PURCHASE ORDER, such special conditions shall apply equally with these CONDITIONS, except that where there is any inconsistency between the two, the special conditions stated on the face of the PURCHASE ORDER shall apply.

21.3 No variation to the CONTRACT shall be effective unless reduced to writing and signed by or on behalf of a duly authorised representative of each PARTY.

## **22. GOVERNING LAW**

22.1 The CONTRACT and the relationships of the parties in connection with the subject matter of the CONTRACT will be governed by and determined in accordance with the laws of England and Wales and the PARTIES hereby submit to the exclusive jurisdiction of the English courts in relation to any legal action or proceedings arising out of or in connection with the CONTRACT.

## **23. NO AGENCY**

23.1 Neither PARTY is the agent or representative of the other PARTY.

## **24. REPRESENTATIONS AND WARRANTIES**

24.1 Each PARTY represents and warrants that it has the full legal right, power and authority to perform its obligations under the CONTRACT and that the person executing the CONTRACT has been duly authorised to sign the CONTRACT on behalf of such PARTY.

## **25. SEVERABILITY**

25.1 In the event any one or more of the provisions contained in the CONTRACT shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the CONTRACT, but the CONTRACT shall be construed as if such invalid, illegal or unenforceable provision had never been set forth herein, and the CONTRACT shall be carried out as nearly as possible according to the original CONDITIONS and intent.

## **26. LIMITATION OF PROVISIONS**

26.1 The SUPPLIER'S liability under the CONTRACT shall cease upon expiry of the CONTRACT or upon its earlier termination, provided, however that the following paragraphs 4.8 (regarding Liquidated Damages for late delivery of the DELIVERABLES), 7.5 (PURCHASER MATERIALS), 8.4 (regarding guarantees), 9 (Indemnities), 10 (Confidentiality), 11 (Intellectual Property), 14 (Spares Support), and 27 (Insurance) shall survive the expiration or earlier termination of the CONTRACT

## **27. INSURANCE**

27.1 During the CONTRACT and for a period of TEN (10) years thereafter, the SUPPLIER shall maintain in force, with a reputable insurance company, as a minimum to cover the liabilities that may arise under or in connection with the CONTRACT:

- (i) Professional indemnity insurance; and
- (ii) Product liability insurance; and
- (iii) Public liability insurance

27.2 SUPPLIER shall, on the PURCHASER'S request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance