

# BRENNTAG

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

These Conditions of Purchase ("**Conditions**") set out the terms on which the Company agrees to purchase Goods and/or Services from the Supplier (such agreement being a "**Contract**").

### 1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following definitions apply:

**Acceptance Conditions** means those conditions as set out in Condition 8.3;

**Affiliate** means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;

**Bribery Laws** 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;

**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;

**Company** means the Brenntag Group company referred to at the beginning of the Order and if none then Monarch Chemicals Limited (registered in England under number 02404731) whose registered office is at Alpha House, Lawnswood Business Park, Redvers Close, Leeds, West Yorkshire, LS16 6QY;

**Condition** means a clause in these Conditions;

**Confidential Information** 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 Company in performing its obligations under, or otherwise pursuant to the Contract;

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

**Control** 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;

**Data Protection Laws** means any applicable law relating to the processing, privacy and/or use of Personal Data, as applicable to either party or the Services, including:

- (a) the GDPR;
- (b) the UK GDPR
- (c) the Data Protection Act 2018;
- (d) any laws which implement any such laws;
- (e) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; and
- (f) all guidance, guidelines, codes of practice and codes of conduct issued by any relevant Data Protection Supervisory Authority relating to such Data Protection Laws (in each case whether or not legally binding);

**Data Protection Supervisory Authority** means any regulator, authority or body responsible for administering Data Protection Laws;

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

**GDPR** means the General Data Protection Regulation, Regulation (EU) 2016/679;

**Goods** means the goods which are the subject of the Order including, without limitation, plant, machinery, equipment, vehicles and materials (including packaging), whether raw or partly or wholly manufactured;

**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;

**International Organisation** shall have the meaning given in the applicable Data Protection Laws from time to time;

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

**Modern Slavery Policy** means the Company's anti-slavery and human trafficking policy in force and notified to the Supplier from time to time;

**Order** means the means the order or orders placed in writing or sent by e-mail or fax by the Company;

**Personal Data** shall have the meaning given in the applicable Data Protection Laws from time to time;

**Price** has the meaning given in Condition (b);

**processing** has the meaning given in applicable Data Protection Laws from time to time (and related expressions, including process, processing, processed, and processes shall be construed accordingly);

**REACH** means European Union Regulation 1907/2006 on the Registration Evaluation, Authorisation and Restriction of Chemicals as amended from time to time and as retained in UK law via the European Union (Withdrawal) Act 2018, the REACH etc. (Amendment etc.) (EU Exit) Regulations 2019, the REACH etc. (Amendment etc.) (EU Exit) Regulations 2019 (as amended), and the REACH etc. (Amendment) Regulations 2021, all as amended from time to time;

**Restricted Period** means the term of the agreement and a period of 5 years after its completion, expiry or termination;

**Restricted Person** means any person employed or engaged by either party in any role who has or had material contact or dealings with the other party and any person employed or engaged by either party in relation to the provision or receipt of the Goods or Services who has or had material contact or dealings with the other party.

**Safety Legislation** means the Health and Safety at Work etc Act 1974 and all health and safety regulations for the purpose of the Health and Safety at Work etc Act 1974, the Consumer Protection Act 1987 and all regulations thereunder, the General Product Safety Regulations 2005 and all other local regulations or successive regulations which apply from time to time (including subordinate legislation and European Union and European Economic Area legislation to the effect that it has direct effect in member states) imposing legal requirements with respect to the safety of Goods, the handling, transportation, storage or disposal of Goods, labelling of Goods or goods incorporating the Goods, and the health and safety of the users of the Goods;

**Sanctions** means any laws or regulations relating to financial or trade sanctions, restrictive measures or trade embargoes;

**Sanctions Authority** means the United Kingdom's HM Treasury Office of Financial Sanctions Implementation, the European Union, the United States Department of the Treasury Office of Foreign Assets Control, the United Nations Security Council, or any other government authority that has jurisdiction over either party or the Services provided under these Conditions;

**Services** means any services to be provided to the Company pursuant to the Order;

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

**Supplier** means the person, firm or company to whom the Order is issued;

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

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; 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:

- (a) a reference to the Contract includes these Conditions, the Order, appendices and annexes (if any);
- (b) any Condition or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions;
- (c) a reference to a 'party' means either the Supplier or the Company and includes that party's personal representatives, successors and permitted assigns;
- (d) 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;
- (e) a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- (f) a reference to a gender includes each other gender;
- (g) words in the singular include the plural and vice versa;
- (h) 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;

- (i) a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (including email);
- (j) a reference to legislation is a reference to that legislation as in force at the date of the Contract 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 a party under the Contract;
- (k) 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 and Wales, be deemed to include a reference to that which most nearly approximates to the English and Welsh equivalent in that jurisdiction.

## 2 APPLICATION OF THESE CONDITIONS

- 2.1 Subject to Condition 2.2 below, the Company only enters into Contracts on the basis of these Conditions. These Conditions can only be altered or qualified by a document signed by a director of the Company.
- 2.2 In the event of a conflict between any of these Conditions and any specific provision referred to on the face of the Order, such a specific provision shall prevail.
- 2.3 The performance of Services or delivery of Goods by the Supplier pursuant to the Order shall constitute unconditional acceptance of these Conditions (and any specific provision referred to on the face of the Order) where acceptance has not previously been communicated to the Company.
- 2.4 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance or order, specification or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
- 2.5 These Conditions apply to and form part of the Contract between the Supplier and the Company. They supersede any previously issued terms and conditions of purchase or supply.
- 2.6 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 Company otherwise agrees in writing.
- 2.7 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 Company.
- 2.8 Each Order by the Company to the Supplier shall be an offer to purchase Deliverables subject to these Conditions.
- 2.9 An Order may be withdrawn or amended by the Company at any time before acceptance by the Supplier. An Order shall lapse unless accepted by the Supplier before the expiry of 14 days after the date of the Order. If the Supplier is unable to accept an Order, it shall notify the Company promptly.

2.10 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 Company reasonably considers is consistent with acceptance of the Order.

### 3 PRICE

3.1 Unless otherwise agreed by the Company in writing:-

- (a) all prices are fixed and inclusive of packaging, packing, shipping, delivery, unloading, unpacking and insurance etc. and of VAT and all other applicable duties and taxes;
- (b) 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 Company before the date the Order is made ("**Price**"). No increase in the Price may be made after the Order is placed.

3.2 The Company shall be entitled to any discount for prompt payment or bulk purchase ordinarily granted by the Supplier in comparable circumstances.

3.3 Where the Company is reliant on the Supplier for any supplies of maintenance, training, spare parts, consumables or other goods, rights or services to benefit fully from the Deliverables ("**Follow-on Deliverables**"). The Supplier will provide those Follow-on Deliverables or procure them to be provided, for at least 36 months following the acceptance of the Goods and/or Services by the Company, at a fixed price.

### 4 PAYMENT

4.1 Invoices shall not be rendered by the Supplier until completion of delivery of all of the Goods and performance of all of the Services which are the subject of the Order; and

4.2 The Supplier shall ensure that each invoice quotes the relevant Order number and shall ensure that each invoice is presented to the Company within six months of the acceptance of the Goods and/or Services by the Company.

4.3 The Company shall pay each validly submitted invoice of the Supplier payment shall be 60 days net monthly i.e. payment at the end of the second month following receipt of the invoice.

4.4 VAT shall be charged by the Supplier and paid by the Company at the then applicable rate.

4.5 The Supplier shall issue a proper tax invoice in respect of VAT tax in accordance with the relevant legislation before the Company shall be required to make payment for Goods or Services supplied in accordance with the Order.

4.6 The Company specifically reserves the right to deduct from any monies due or to be become due to the Supplier any monies due to the Company from the Supplier whether by way of set-off, lien or counterclaim and whether arising in connection with the Contract, another contract or otherwise.

4.7 The Company shall not be responsible for the payment of any charges for Goods supplied or Services performed in excess of the Goods or Services required by the Order or any variation of it unless otherwise agreed in writing by the Company.

4.8 No payment of or on account of the Contract price shall constitute any admission by the Company as to proper performance by the Supplier of its obligations.

4.9 The Company will not be obliged to pay for or return containers, crates or packing materials or other durable packaging of any description except as otherwise agreed in writing by the Company.

4.10 The Supplier agrees:-

- (a) to mark clearly the Company's order number on each package, packing notes, advice notes, invoices, monthly statements and all other correspondence relating to the consignments of the Goods; and
- (b) to provide all documentation required under applicable law or the Specification promptly to the Company including Export Health Certificates.

4.11 Without prejudice to any other remedy, where the Supplier fails to comply with the provisions of Condition 4.5, the Supplier accepts that a delay in payment may ensue. The Company shall be entitled to take advantage of any prompt payment discount offered to the Company irrespective of any delay in payment due to the Supplier failing to comply with the provisions of Condition 4.10.

4.12 The Supplier shall be entitled to charge the Company interest on any sums paid late under these Conditions from the due date until the date of payment. Such interest shall be calculated on a daily basis at the rate of three percent (3%) above the base lending rate of Bank of England from time to time prevailing, as well after as before any judgment.

### 5 CANCELLATION

5.1 Without prejudice to any other specific provision of the Contract or any other right available to the Company, the Company shall have the right to cancel the Contract in whole or in part at any time by giving written notice to the Supplier whereupon all work under the Order (or the cancelled part) shall be discontinued and the Company shall pay to the Supplier such proportion of the Order price as may be fair and reasonable having regard to the value of work done, of the Goods previously delivered and of Services performed under the Order. On such payment by the Company no further sum or sums shall be due by way of damages, loss of profits or otherwise from the Company by reason of such cancellation.

### 6 TIME, DELIVERY AND PERFORMANCE

6.1 The Supplier shall comply in all respects with the Company's programme for delivery of the Goods and performance of the Services and any reasonable request for information about progress against the programme shall be provided by the Supplier without delay.

6.2 The Goods shall be deemed delivered by the Supplier only following the later of completion of unloading of the Goods at the Location and when the delivery has been accepted by the Company in accordance with Condition 8. The Supplier shall notify the Company as soon as practicable upon becoming aware that it will be unable to deliver the Goods on the date specified in the Order.

6.3 All Goods supplied against the Order shall be properly packed and secured in such a manner as to reach their destination in good condition, and shall (unless otherwise directed by the Company) be delivered by the Supplier to the Company's works carriage paid, in accordance with the Company's instructions and bearing the Company's order number on each package.

6.4 If Goods are delivered before the date specified in the Order, the Company shall be entitled at its sole discretion to refuse to take delivery or to charge for insurance and

storage of the Goods until the date for delivery specified in the Order.

Company shall, after the Goods are unpacked, make them available for collection by the Supplier at the Supplier's expense.

- 6.5 In the event of any strike, lock-out, fire, explosion or accident or of any stoppage of the Company's business or work for reasons beyond its reasonable control which may prevent or hinder the use of the Deliverables or which may impair the performance of any obligation of the Company any payment for those Deliverables may be suspended or postponed at the Company's option without any liability until such time as the circumstances preventing or hindering the use of the Goods or performance of the Services have ceased. The Company shall give the Supplier notice as soon as reasonably practicable of the said circumstances having arisen and the Company shall use and continue to use its reasonable endeavours to overcome the said circumstances and to minimise the said suspension or postponement.
- 6.6 If a carrier is specified in connection with the Order such carrier shall be deemed to be an agent of the Supplier and not of the Company.
- 6.7 Consignment or part deliveries may be rejected unless the Company has agreed in writing to accept such deliveries.
- 6.8 Unless otherwise stated in the Order, the Supplier is solely responsible for obtaining all the export and import licences for the Goods and the Supplier shall be solely responsible for any delays due to such licences not being available when required.
- 6.9 In the case of any Goods supplied from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to the Company as to the country of origin of the Goods. The Supplier shall comply with any applicable laws governing such imports and should be liable to the Company for all duties and taxes in respect of the import into the United Kingdom of the Goods.
- 6.10 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 performance of the Services at the Location. The Supplier shall notify the Company as soon as practicable upon becoming aware that it will be unable to perform the Services on the date specified in the Order.
- 6.11 The Deliverables shall not be delivered by or performed in instalments unless otherwise agreed in writing by the Company. In the event that Deliverables are to be supplied in instalments, the Contract is still to be treated as a single contract. In the event that the Supplier fails to deliver or perform any instalment, the Company may treat the whole contract as repudiated.
- 6.12 Each delivery or performance of the Deliverables shall be accompanied by a delivery note stating:
- (a) the date of the Order;
  - (b) the Order number;
  - (c) the relevant Company and Supplier details;
  - (d) if Goods, the product numbers and type and quantity of Goods in the consignment;
  - (e) if Services, the category, type and quantity of Services performed;
  - (f) any special instructions, handling and other requests; and
  - (g) in the case of Goods, whether any packaging material is to be returned, in which case the
- 6.13 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 Company shall (without prejudice to its other rights and remedies) be entitled at the Company's sole discretion:
- (a) to terminate the Contract in whole or in part;
  - (b) to purchase the same or similar Deliverables from a supplier other than the Supplier;
  - (c) to recover from the Supplier all costs and losses resulting to the Company, including the amount by which the price payable by the Company to acquire those Deliverables from another supplier exceeds the price payable under the Contract and any loss of profit; and
  - (d) all or any of the foregoing.
- 6.14 If the Company fails to accept delivery of the Goods on the date or within the period set out in the Order, the Supplier shall store and insure the Goods pending delivery, and the Company shall pay reasonable storage charges.
- 6.15 Where performance occurs on the Company's premises, the Supplier shall ensure that best industry standards are adopted for the health and safety of both the Supplier's personnel and of any other individuals who may be impacted upon by the Supplier's actions. The Company may refuse or terminate access to its premises to any individual whom the Company reasonably considers to be undesirable. Whilst on the Company's premises, the Supplier's personnel must comply with the Company's reasonable requirements as to security, health and safety routines, times and areas of access, and otherwise. The Supplier will be responsible to the Company on a full indemnity basis for all damage and injury caused by its personnel.
- 6.16 The provisions of Condition 6.13 shall not apply to the extent the Company fails to make the Location available to the Supplier for performance of the Services.
- ## 7 HAULAGE OR LOGISTICS
- 7.1 The terms of this Condition 7 shall apply only where the Services are haulage or logistics services.
- 7.2 Where, in connection with the provision by Supplier of haulage or logistics services, the Supplier seeks to impose any alternative or additional conditions, such terms and conditions shall apply in only respect of such services and only to the extent that they do not (a) contradict this Contract or (b) reduce the Supplier's liability, risk or obligations under this Contract.
- 7.3 The Supplier acknowledges that deliveries are time critical for the Supplier and its customers. Where the Supplier becomes aware that the delivery may be late, the Supplier shall promptly inform the Company of this.
- 7.4 The Supplier shall comply with the Company's written instructions, including as set out in the Order, for handling and transporting the Goods and shall indemnify the Supplier for loss or damage arising as a result of failing to comply with the Company's written instructions.
- 7.5 No limits on Supplier's liability shall apply in respect of losses suffered by the Company or any Affiliate of the Company or any customer of the Company to the extent

that such losses arise out of the Supplier's failure to comply with the instructions set out in the Order.

- 7.6 The Supplier shall be responsible for transport and unloading costs and insurance of the Goods to their full value against all risk of damage or loss prior to completion of delivery as specified in Condition 6.2.

## **8 ACCEPTANCE, INSPECTION AND TESTING**

- 8.1 Any inspector or representative authorised by the Company shall be entitled to inspect:

- (a) the Goods;
- (b) any Services being performed; and
- (c) and any tools or plant supplied pursuant to Condition 11 and any other materials supplied by the Company to the Supplier,
- (d) at any reasonable time either at the Supplier's works or at the works of any sub-contractor and to require all defects or deficiencies to be made good and alterations made. The exercise or failure to exercise any right granted by this Condition 8 shall not constitute or be taken as acceptance or approval of all or any part of the Goods, the Services or the good condition of the said tools, plant or material.

- 8.2 The Company shall not have accepted, or be deemed to have accepted, the Deliverables until the Acceptance Conditions are fulfilled.

- 8.3 The Acceptance Conditions are that:

- (a) for Goods, the Goods have been delivered to or at the Location;
- (b) for Services, the Services have been performed at the Location; and
- (c) the Company 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 and conditions of the Contract.

- 8.4 The Company 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 Company'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.

- 8.5 Any rejected Goods may be returned to the Supplier by the Company at the Supplier's cost and risk. The Supplier shall pay to the Company a reasonable charge for storing and returning any of the Goods over-delivered or rejected.

- 8.6 The Company may inspect and test the Deliverables during performance or during manufacture or processing prior to despatch, and the Supplier shall provide the Company with all facilities reasonably required.

- 8.7 Any inspection of the Deliverables shall not be deemed to be acceptance of the Deliverables or a waiver of any of the Company's rights and remedies, including its right to reject.

- 8.8 The Company shall be permitted to inspect any Goods during (including Goods on the Supplier's premises) manufacture and whilst in storage so long as reasonable

written notice of the inspection is provided to the Supplier. If, as a result of the inspection, the Company is not satisfied that the quality of the goods or the standards of their manufacture, storage or handling conforms with the terms of this Contract, the Supplier shall take such steps as are necessary to ensure compliance. If the Company continues to be unsatisfied, the Company may we can terminate the Contract without penalty.

- 8.9 The rights of the Company in this Condition 8 are without prejudice to the Company's rights under Condition 12

## **9 RECORD KEEPING**

- 9.1 The Company may urgently require information as to how Deliverables were performed, including information on the involvement and/or activities of any suppliers or sub-contractors of the Supplier involved in performance. The Supplier will meet any reasonable such request as soon as reasonably possible, and will keep records adequate for that purpose for at least two years after following completion of performance. Without limitation, these records must provide full traceability for all Goods comprised in, or used in making, any contract Goods which are in any respect safety-critical. They must also demonstrate compliance of the contract work with all legal or regulatory requirements and with all contractually binding quality and performance standards

## **10 TITLE AND RISK**

- 10.1 Unless otherwise agreed in writing by the Company:

- (a) risk in the Goods shall pass to the Company on delivery and when the Company has accepted the Goods as conforming in every respect with the Contract.
- (b) title to the Goods shall pass to the Company on the sooner of: (a) delivery of the Goods as specified in Condition 6.2 and (b) the time of any payment being made for the Goods.

- 10.2 The passing of title shall not prejudice any other of the Company's rights and remedies, including its right to reject the Goods.

- 10.3 Neither the Supplier, or any other person, shall have a lien on, right of stoppage in transit or other rights in or to any Goods title to which have vested in the Company or any specifications or materials of the Company, and the Supplier shall ensure that relevant third parties accept the exclusion of such lien and rights.

- 10.4 All tools, equipment and materials of the Supplier required in the performance of the Supplier's obligations under the Contract shall be and remain at the sole risk of the Supplier whether or not they are upon premises of the Company or other premises specified in the Order.

- 10.5 The Supplier warrants and represents that it:

- (a) 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 Company; and
- (b) shall hold such title and right to enable it to ensure that the Company shall acquire a valid, unqualified title to the Goods and shall enjoy quiet possession of them.

## **11 DATA AND TOOLS**

- 11.1 Any tool or plant which the Supplier may construct or acquire specifically in connection with the Goods and on

respect of which the Supplier charges the Company shall be and remain the Company's sole and unencumbered property and the Company may at any time call for possession of such tool or plant.

- 11.2 In the event of the Company providing any materials, drawings, specifications and other data or other articles to the Supplier, e.g. for modification or copying, those articles shall remain the property of the Company at all times. Those articles must be kept confidential and secure. The Company shall be able to enter the Supplier's premises at any time on reasonable notice to ensure compliance with this Condition 11. While such articles remain in the custody of the Supplier, the Supplier must not use them, copy them or disseminate them, electronically or otherwise, except in the performance of this Contract. The Company shall retain copyright and any other available intellectual property rights in any plans, design drawings, computer programs, compilations of data, specifications or the like which it provides to the Supplier. The Supplier must indemnify the Company against any loss caused to the Company, and account to the Company for any profit which it makes, through breach of this provision. Risk for such articles be the Supplier's whilst the Supplier has such articles in its possession and the Supplier shall hold relevant insurance coverage in respect of same.

## 12 QUALITY AND GUARANTEE

12.1 The Supplier warrants and represents that, the Deliverables shall:

- (a) be of first class quality, new;
- (b) be supplied strictly in accordance with the quantities, drawings, specifications, standards and stipulations contained in or annexed to the Order and any other provision agreed in writing by the parties;
- (c) shall not contain any contaminant or impurity other than as expressly agreed in writing by the Company;
- (d) be free from defects in design, material and workmanship;
- (e) comply with all applicable laws, standards and best industry practice;
- (f) be performed with the level of skill and care reasonably expected of a leading supplier of services of a similar or equivalent nature to those provided by the Supplier;
- (g) if Goods, be supplied in accordance with good manufacturing practice and be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- (h) if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s 13;
- (i) be fit for purpose and any purpose held out by the Supplier and set out in the Order;
- (j) 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 Sale of Goods Act 1979; and
- (k) neither the sale or supply of any Deliverable, nor its proper use by the Company for an intended purpose, will breach any property rights in or about

that Deliverable, including intellectual property rights, of any other person.

- 12.2 The Supplier agrees that the approval by the Company of any design or Specification provided by the Supplier shall not relieve the Supplier of any of its obligations under this Condition 12.
- 12.3 The Supplier warrants that it understands the Company's business and needs.
- 12.4 The Company may reject any Deliverables that do not comply with Condition 12.1 and the Supplier shall, at the Company's option, promptly remedy, repair, replace, correct, re-perform within 7 days of being notified of the Company's notice of rejection or refund the price of any such Deliverables provided that the Company serves a written notice on the Supplier within the Warranty Period that some or all of the Deliverables do not comply with Condition 12.1.
- 12.5 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.
- 12.6 Should the Company be required to open up or dismantle any vehicle or assembly due to non-compliant Deliverables, the Supplier shall be liable for any costs the Company incurs in opening up or dismantling, re-assembling and making repairs, replacements and testing of the replacement Deliverable.
- 12.7 Where contract goods or rights are bought or obtained by the Supplier from a third party, any benefits or indemnities that are held by the Supplier from that third party, in respect of those items, shall be held on trust for the Company.
- 12.8 The Company'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, sections 12 to 16 and the Sale of Goods Act 1979, sections 13 to 15.
- 12.9 The Company shall be entitled to exercise its rights under Condition 12 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 Condition 8.4.
- 12.10 The Supplier warrants that it has the expertise and resources indicated by it prior to the Contract being entered into and confirms the accuracy of all statements and representations made by the Supplier in respect of the Goods and Services prior to or in the Order.
- 12.11 Nothing contained in these Conditions shall in any way detract from the Supplier's obligations under common law or statute or any express warranty or condition contained in the Order.
- 12.12 The Supplier agrees to assign to the Company upon request the benefit of any warranty, guarantee or similar right which the Supplier has against any third party manufacturer or supplier of the Goods or any part thereof.

## 13 INDEMNITY AND INSURANCE

- 13.1 The Supplier agrees to indemnify the Company against:-
- 13.2 all losses, costs, damages, expenses and claims caused to and made against the Company which would not have been caused or made had the Supplier fulfilled its express or implied obligations under the Contract;

- 13.3 all claims in respect of royalties payable by the Supplier in respect of the Goods and/or Services;
- 13.4 all claims arising out of errors and omissions in drawings, calculations, packing details or other particulars supplied by the Supplier; and
- 13.5 all claims made against the Company arising out of the acts and omissions of the Supplier, its employees, agents or its sub-contractors.
- 13.6 The Supplier shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom insuring the Deliverables and any of the Company's materials in the Supplier's possession against the usual risks, including accident, fire and theft, for their full replacement value until the risk in them passes to the Company, 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 Company the benefit of such insurance.

**14 INTELLECTUAL PROPERTY RIGHTS**

- 14.1 All specifications provided by the Company and all Intellectual Property Rights in the Deliverables made or performed in accordance with such specifications shall vest in and remain at all times the property of the Company 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 Company 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 Company's opinion to so vest all such Intellectual Property Rights in the Company, and to enable the Company to defend and enforce such Intellectual Property Rights, and the Supplier shall at the Company's request waive or procure a waiver of applicable moral rights.
- 14.2 The Supplier shall indemnify the Company from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Company as a result of or in connection with any action, demand or claim that use or possession of any of the Intellectual Property Rights, infringes the Intellectual Property Rights of any third party ("**Supplier IPR Claim**"):
- 14.3 If any Supplier IPR Claim is made or is reasonably likely to be made against the Company, the Supplier shall promptly and at its own expense either:
  - (a) procure for the Company the right to continue using and possessing the relevant Intellectual Property Rights; or
  - (b) modify or replace the infringing part of the Intellectual Property Rights and without adversely affecting the functionality of the Intellectual Property Rights as set out in the Contract so as to avoid the infringement or alleged infringement, provided that if, having used reasonable endeavours, neither of the above can be accomplished on reasonable terms, the Supplier shall (without prejudice to the indemnity above) refund the price paid by the Company in respect of the affected Intellectual Property Rights.
  - (c) All material, drawings, patterns, gauges, samples, specifications and other technical data supplied by the Company in connection with the provision of the Services shall be and shall at all times remain the property of the Company. The contents of the same

and all such data shall be regarded as Confidential Information for the purposes of Condition 17 below.

- (d) Where any material, drawings, patterns, gauges, samples, specifications and other technical data are supplied by the Company to the Supplier, the Supplier shall return the same and all copies thereof on the demand of the Company. The Supplier shall not use any such material, drawings, patterns, gauges, samples, specifications and other technical data except in connection with the provision of the Services to the Company.

**15 LEGISLATIVE COMPLIANCE**

**COMPLIANCE WITH LAW**

- 15.1 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.

**HEALTH AND SAFETY**

- 15.2 The Supplier warrants that:-
- 15.3 the Supplier will comply and has complied with the duties imposed on it by the Safety Legislation or any amendment thereto or re-enactment thereof and of all other relevant statutory provisions, bye-laws, rules and regulations so far as they are applicable to the site or the Goods or the Services; and
- 15.4 that all Goods supplied will be supplied with all necessary safety data and information sheets and registrations sufficient to comply with current statutory requirements, including without limitation those required under REACH.

**CONSUMER PROTECTION**

- 15.5 The Supplier warrants that all Goods supplied to the Company together with all necessary instructions, information data and warnings supplied with them will be designed, manufactured and produced in such a manner as to ensure that under no circumstances could the Goods be held to be defective under applicable consumer protection law (and, in particular, Part 1 of the Consumer Protection Act 1987).
- 15.6 If the Supplier becomes aware at any time of any incidents, events or discoveries which are in any way relevant to the safe operation of Goods previously supplied, the Supplier shall without delay issue written notice of such incident, event or discovery to the Company.
- 15.7 The Supplier shall indemnify, reimburse and compensate the Company for all losses and damages (including costs, expenses and charges for legal action in which the Company may be involved) which the Company may incur or have to bear as a result of any claim or claims arising as a result of the Goods being adjudged defective under applicable consumer protection law (and, in particular Part 1 of the Consumer Protection Act 1987).
- 15.8 The Supplier undertakes to maintain adequate insurance cover (with insurers of repute) in respect of any consumer protection or product liability and to produce to the Company without delay upon request a copy or copies of the relevant policy or policies of insurance.

**ANTI-BRIBERY**

- 15.9 In performing its obligations under the Contract, the Supplier shall (and shall ensure that each of its

subcontractors shall) comply with all applicable laws, statutes, regulations and codes from time to time in force including, but not limited to, the Bribery Act 2015 and the Modern Slavery Act 2015.

15.10 For the purposes of Conditions 15.9 to 15.13 the expressions **adequate procedures** and **associated with** shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.

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

- (a) all of that party's personnel;
- (b) all others associated with that party; and
- (c) all of that party's subcontractors;

involved in performing the Contract so comply.

15.12 Without limitation to Condition 15.11, 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.

15.13 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 Condition 15.

#### ANTI-SLAVERY

15.14 The Supplier undertakes, warrants and represents that:

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

- (a) committed an offence under the Modern Slavery Act 2015 ("**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;
- (d) it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy; and
- (e) it shall notify the Company immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Supplier's obligations under Condition 15.14 Such notice to set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations. A breach of this Condition 15.14 shall be considered a material breach incapable of remedy and, in the event of such a breach, the Supplier agrees to indemnify the Company against any losses, liabilities, damages, costs (including but not limited to reasonable legal fees) and expenses incurred by the Company as a result.

#### ANTI FACILITATION OF TAX EVASION

15.15 The Supplier shall:

- (a) act in compliance with all applicable laws and regulations relating to the criminal facilitation of tax evasion (including the Criminal Finances Act 2017) in the provision of the Services under the Contract;
- (b) have and maintain throughout the term of the Contract such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Supplier) and to ensure compliance with Condition (a); and
- (c) provide the Company with all reasonable assistance to enable the Company to comply with the Criminal Finances Act 2017 including, without limitation, promptly reporting to the Company any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the Contract.
- (d) The Supplier shall ensure that any person associated with the Supplier who is providing Services under the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Condition **Error! Reference source not found.** ("**Relevant Terms**"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Company for any breach by such persons of any of the Relevant Terms.
- (e) A breach of this Condition 15.15 shall be deemed to be a material breach incapable of remedy and, in the event of such a breach, the Supplier agrees to indemnify the Company against any losses, liabilities, damages, costs (including but not limited to reasonable legal fees) and expenses incurred by the Company as a result.

#### SANCTIONS COMPLIANCE

15.16 The Supplier warrants and represents that:

- (a) neither it nor any director or any person that owns or holds a controlling interest in the Buyer, is designated under any list of sanctions targets maintained by a Sanctions Authority;
- (b) it is not engaged in any activity in breach of applicable Sanctions adopted and maintained by a Sanctions Authority; and
- (c) it is not engaged in any activity in breach of applicable Sanctions adopted and maintained by a Sanctions Authority; and
- (d) the Services shall not be used to facilitate any payments to or dealings with any person that is subject to Sanctions adopted and maintained by a Sanctions Authority, or which would otherwise breach applicable Sanctions.

15.17 The provisions in this Condition 15.17 shall apply other than to the extent where this would result in a violation of the UK's Protecting of Trading Interests legislation or Council Regulation (EC) No 2271/96 as amended.

15.18 The Supplier shall fully and effectually indemnify the Company against any costs, claims, losses, expenses and damages incurred by the Company or for which it may be liable due to or arising directly or indirectly out of any breach of the obligations in this Condition 15.



## 16 MARKING OF GOODS AND PUBLICITY

- 16.1 Unless otherwise agreed in writing no maker's name or other trade mark shall appear on any Goods supplied pursuant to the Order.
- 16.2 Neither the Order nor the name of the Company shall be disclosed to any third party or used by the Supplier or any sub-contractor for advertisement or publicity purposes without the Company's prior written consent.

## 17 CONFIDENTIALITY AND ANNOUNCEMENTS

- 17.1 Subject to Condition 18, the Supplier shall keep confidential all Confidential Information of the Company and shall only use the same as required to perform the Contract. The provisions of this Condition shall not apply to:
- (a) any information which was in the public domain at the date of the Contract;
  - (b) any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
  - (c) any information which is independently developed by the Supplier without using information supplied by the Company ; or
  - (d) any disclosure required by law or a court or regulatory authority with competent jurisdiction or otherwise by the provisions of the Contract.

17.2 This Condition shall remain in full force and effect in perpetuity.

17.3 Subject to Condition 18, the Supplier shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

## 18 PROCESSING OF PERSONAL DATA

18.1 Each party shall comply with Data Protection Laws and shall not by its act or omission cause the other party to breach the said Data Protection Laws.

18.2 The Supplier shall perform all its obligations under this Condition 18 at no cost to the Company.

## 19 FORCE MAJEURE

In the event of any strike, lock-out, fire, explosion or accident or of any stoppage of the Company's business or work for reasons beyond its reasonable control which may prevent or hinder the use of the Goods or the Services or which may impair the performance of any obligation of the Company, any payment for those Goods or Services may be suspended or postponed at the Company's option without any liability until such time as the circumstances preventing or hindering the use of the Goods or performance of the Services have ceased. The Company shall give the Supplier notice as soon as reasonably practicable of the said circumstances having arisen and the Company shall use and continue to use its reasonable endeavours to overcome the said circumstances and to minimise the said suspension or postponement.

## 20 TERMINATION

20.1 The Company may terminate the Contract at any time by giving notice in writing to the Supplier if:

- (a) the Supplier commits a material breach of the Contract and such breach is not remediable; or

- (b) the Supplier commits a material breach of the Contract which is not remedied within thirty (30) days of receiving written notice of such breach. For the avoidance of doubt, a breach of Condition 15;

- (c) the Supplier has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within thirty (30) days after the Company has given notification that the payment is overdue; or

- (d) 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.

20.2 The Company may exercise its rights under Condition 20.1 above notwithstanding that:-

- (a) the Company has accepted all or part of the Goods; or

- (b) the title in the Goods has passed to the Company.

- (c) Upon any termination, the Company may in its absolute discretion keep or return any of the Goods in the possession of the Company. The Company shall be liable to pay only for such of the Goods, if any, that the Company so keeps, the price being determined pro rata with respect to the total Contract price. Termination shall be without prejudice to any claim that the Company may have against the Supplier arising out of a breach of the Contract by the Supplier.

20.3 Where a defect is discovered in the Deliverables:

- (a) which is reasonably apparent on a visual inspection, then within ninety (90) days after delivery of the Goods to the Company or the provision of the Services; or

- (b) which is not reasonably apparent on a visual inspection, then within ninety (90) days after the Company has discovered the defect in question,

- (c) in either event the Company shall be entitled to require the Supplier to rework or replace the Goods so that the defect is not present or else the Company may by written notice, reject the Goods and terminate the Contract.

20.4 Where the Company exercises its right under Condition 20.3(c) above to require the Supplier to rework or replace the Goods, the Supplier shall be responsible for making good with all possible speed the defective or damaged Deliverables as the case may be including the full replacement of the Goods where necessary together with all costs of re-delivery to the Company's site and installation and all other incidental costs and expenses incurred by the Company.

20.5 The Company may terminate the Contract at any time by giving notice in writing to the Supplier if the Supplier:

- (a) stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

- (b) is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Company reasonably believes that to be the case;

- (c) becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;

- (d) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - (e) has a resolution passed for its winding up;
  - (f) 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;
  - (g) 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;
  - (h) has a freezing order made against it;
  - (i) is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items;
  - (j) is subject to any events or circumstances analogous to those in Conditions 20.5 (a) to 20.5 (i) in any jurisdiction;
  - (k) takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in Conditions 20.5 (a) to 20.5 (j) 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.
- 20.6 The Company may terminate the Contract at any time by giving not less than 28 days' notice in writing to the Supplier if the Supplier undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.
- 20.7 The right of the Company to terminate the Contract pursuant to Condition 20.5 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to the Contract.
- 20.8 If the Supplier becomes aware that any event has occurred, or circumstances exist, which may entitle the Company to terminate the Contract under this Condition 20, it shall immediately notify the Company in writing.
- 20.9 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Buyer at any time up to the date of termination.

## 21 DISPUTE RESOLUTION

- 21.1 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 Condition 21.
- 21.2 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.
- 21.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
- (a) Within seven days of service of the notice, the parties shall meet to discuss the dispute and attempt to resolve it.

- (b) If the dispute has not been resolved within seven days of the first meeting of the parties, then the matter shall be referred to the party chief executives (or persons of equivalent seniority). The chief executives (or equivalent) shall meet within seven days to discuss the dispute and attempt to resolve it.

21.4 The specific format for the resolution of the dispute under Condition 21.3 (a) and, if necessary, Condition 21.3 (b) shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.

21.5 If the dispute has not been resolved within 14 days of the first meeting of the chief executives (or equivalent) under Condition 21.3 (b) then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.

21.6 Until the parties have completed the steps referred to in Conditions 21.3 and 21.5, 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.

21.7 The rights of the Company in this Condition 21 are in addition to any that the Company may have in law.

## 22 NON-SOLICITATION

22.1 In order to protect the legitimate business interests of each party, during the Restricted Period neither party shall, either directly or indirectly, by or through itself, its affiliate, its agent or otherwise, or in conjunction with its affiliate, its agent or otherwise, whether for its own benefit or for the benefit of any other person:

- (a) solicit, entice or induce, or endeavour to solicit, entice or induce, any Restricted Person of the other party with a view to employing or engaging the Restricted Person, or
- (b) employ or engage, or offer to employ or engage a Restricted Person of the other party without the prior written consent of the other party.

22.2 Notwithstanding Condition 22.1 either party may employ or engage any Restricted Person of the other party who has responded directly to a bona fide recruitment drive either through a recruitment agency engaged by the relevant party or via an advertisement placed publicly by the relevant party (either in the press, social media, online or in trade and industry publications).

22.3 In the event of a breach of Condition 22.1 which results in a Restricted Person leaving the relevant party and being employed or engaged by the party in breach, the party in breach shall pay to the other party by way of liquidated damages an amount equivalent to the annual salary of the Restricted Person leaving the relevant party.

22.4 The provisions in Condition 22.3 shall be without prejudice to a party's ability to seek damages or claim injunctive relief.

## 23 INSTRUCTIONS

23.1 All instructions, information and warnings supplied with the Goods shall be supplied in English and in a form suitable for photocopying or electronic copying by the Company.

23.2 The Supplier hereby permits the Company to copy those instructions, information and warnings.

## **24 NOTICES**

- 24.1 Any notice or other communication given by a party under these Conditions shall:
- (a) be in writing and in English;
  - (b) be signed by, or on behalf of, the party giving it (except for notices sent by email); and
  - (c) be sent to the relevant party at the address set out in the Contract.
- 24.2 Notices may be given, and are deemed received:
- (a) by hand: on receipt of a signature at the time of delivery;
  - (b) by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;
  - (c) by Royal Mail International Tracked & Signed or Royal Mail International Signed post: at 9.00 am on the fifth Business Day after posting; and
  - (d) by email: on receipt of a delivery or read receipt email from the correct address.
- 24.3 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 Condition 24.1 and shall be effective:
- (a) on the date specified in the notice as being the date of such change; or
  - (b) if no date is so specified, three Business Days after the notice is deemed to be received.
- 24.4 All references to time are to the local time at the place of deemed receipt.
- 24.5 This Condition does not apply to notices given in legal proceedings or arbitration.

## **25 CUMULATIVE REMEDIES**

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

## **26 FURTHER ASSURANCE**

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

## **27 ENTIRE AGREEMENT**

- 27.1 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.
- 27.2 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.
- 27.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

## **28 VARIATION**

- 28.1 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 Company.
- 28.2 The Supplier shall advise the Company immediately if such amendments either prevent the specified delivery dates being met or have any other significant implication regarding the Supplier's obligations to the Company.

## **29 ASSIGNMENT AND SUBCONTRACTING**

- 29.1 The Supplier may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Company's prior written consent, such consent not to be unreasonably withheld or delayed.
- 29.2 Any authority given by the Company for the Supplier to subcontract the Order or any part of it shall not impose any duty on the Company to enquire as to the competency of any authorised sub-contractor.
- 29.3 The Supplier shall remain solely responsible for the acts and omissions of any sub-contractor (whether authorised or not).
- 29.4 Notwithstanding Condition 29.1, the Supplier may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Company prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Supplier acknowledges and agrees that any act or omission of its Affiliate in relation to the Supplier's rights or obligations under the Contract shall be deemed to be an act or omission of the Supplier itself.

## **30 SET OFF**

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

## **31 NO PARTNERSHIP OR AGENCY**

- 31.1 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.

## **32 EQUITABLE RELIEF**

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

## **33 SEVERANCE**

- 33.1 If any provision of the Contract (or part of any provision) is or shall be judged by a court of competent jurisdiction void

or unenforceable in becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

- 33.2 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.

#### **34 WAIVER**

- 34.1 Unless granted by the Company in writing, no failure, delay or omission by the Company 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.
- 34.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Company shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Company .

#### **35 ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG)**

- 35.1 In order to assist the Company in achieving its sustainability commitments, including to lower its carbon emissions, the Buyer shall be committed to sustainability and shall use reasonable endeavours to provide the Deliverables in a way that is carbon neutral.

#### **36 CONFLICTS WITHIN CONTRACT**

- 36.1 If there is a conflict between the terms contained in the Conditions and the terms of the Order, appendices or annexes to the Contract, the terms of the Conditions shall prevail.
- 36.2 Subject to the above order of priority between documents, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.

#### **37 COSTS AND EXPENSES**

- 37.1 The Supplier 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).

#### **38 THIRD PARTY RIGHTS**

- 38.1 Except as expressly provided for in Condition 38.2, 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.
- 38.2 Any Affiliate of the Company 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.

#### **39 GOVERNING LAW**

- 39.1 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.

#### **40 JURISDICTION**

- 40.1 The parties irrevocably agree that the courts of England 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), except that the Company may seek injunctive relief outside such jurisdiction.