



richard alan engineering

A RICHARD ALAN GROUP COMPANY



TERMS AND CONDITIONS OF BUSINESS

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these Conditions.

Business Day: a day (other than a Saturday, Sunday, or public holiday) when the banks in London are open for business.

Buyer: the person, firm or body corporate which purchases the Goods and/or Services from the Company.

Buyer's Materials: any equipment, systems, cabling or facilities provided by the Buyer and used directly or indirectly in the supply of the Services.

Buyer's Manager the Buyer's manager for the Contract appointed under clause 8.1.3.

Control: a person holds, directly or indirectly, the power to direct or cause the direction of the management and policies of another person (whether through the ownership of voting shares, control of the board of directors, any powers conferred by the articles of association or other constitutional documents of that person or otherwise) and "Controlled" and "Controls" shall be interpreted accordingly.

Company: Richard Alan Engineering Company Limited of Richard Alan House, Shaw Cross Business Park, Owl Lane, Dewsbury, West Yorkshire, WF12 7RD.

Company's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Company or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Buyer.

Company Manager: the Company's manager for the Contract appointed under clause 7.5

Conditions: these terms and conditions as amended from time to time in accordance with clause 20.3

Contract: the contract between the Company and the Buyer for supply of the Goods and/or Services in accordance with these Conditions.

Delivery Point: the place where delivery of Goods or the performance of the Services is to take place under clause 4.

Deliverables the deliverables set out in the Order.

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Goods the goods (or any part of them) set out in the Order.

Good Specification any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Buyer and the Company.

Input Materials: all Documents, information and materials provided by the Buyer relating to the Services, including computer programs, data, reports and specifications.

Intellectual Property Rights: 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, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Milestones: a date by which a part of the Services is to be completed, as set out in the Services Specification.

Order: the Buyer's order for the supply of Goods and/or Services, as set out in the Buyer's purchase order form, the Buyer's written acceptance of the Company's quotation, or overleaf as the case may be.

Pre-existing Materials: all Documents, information and materials provided by the Company relating to the Services or Goods which existed prior to the commencement of the Contract and in particular any pre-existing materials specified in the Contract.

Services the services, including the Deliverables, supplied by the Company to the Buyer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided in writing by the Buyer to the Company.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these Conditions.

2 APPLICATION OF TERMS

2.1 The Order constitutes an offer by the Buyer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order or begins to perform the Contract at which point and on which date the Contract shall come into existence ("**Commencement Date**").

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company, which is not set out in the contract.

2.5 The Buyer shall ensure that the terms of the Order and any applicable Goods Specification or Services Specification are complete and accurate.

2.6 Any quotation given by the Company shall not constitute an offer, and is only valid for 30 days from its date of issue.

3 GOODS

3.1 The quantity and description of the Goods shall be as set out in the Order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

3.3 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Buyer, the Buyer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Company's use of the Goods Specification. This clause 3.3 shall survive termination of the Contract.

4 DELIVERY

4.1 Unless otherwise agreed in the Order, delivery of the Goods shall take place at the Buyer's principle place of business provided for in the Order.

4.2 The Buyer shall take delivery of the Goods from the Company (or its agent) within 7 days of the Company giving it notice that the Goods are ready for delivery.

4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for

delivery shall not be of the essence. If no dates are specified, delivery shall be within a reasonable time.

- 4.4 Delivery of the Goods shall be completed on the Goods' arrival at, or collection from, the Delivery Point.
- 4.5 If the Buyer fails to accept or take delivery of the Goods within 5 Business Days of the Company notifying the Buyer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Contract in respect of the Goods:
- 4.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the 5th Business Day following the day on which the Company notified the Buyer that the Goods were ready; and
- 4.5.2 the Company shall store the Goods until delivery takes place, and be entitled to charge the Buyer for all related costs and expenses (including insurance).
- 4.6 If the Company delivers to the Buyer a quantity of Goods of up to 10% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of surplus or shortfall and shall pay for such Goods at a pro rata Contract rate.
- 4.7 The Company may deliver the Goods or Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

5 **NON-DELIVERY**

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

6 **RISK & TITLE**

- 6.1 The Goods are at the risk of the Buyer from the time of delivery.
- 6.2 Title to the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 6.2.1 the Goods, and
- 6.2.2 all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3 Until title to the Goods has passed to the Buyer, the Buyer shall:
- 6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
- 6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 6.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 6.4 The Buyer may resell the Goods before title has passed to it solely on the following conditions:
- 6.4.1 any sale shall be effected in the ordinary course of the Buyer's business; and
- 6.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 The Buyer's right to possession of the Goods shall terminate immediately if the Buyer is subject to any of the event listed in clause 15.1.
- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any

premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

- 6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 6.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this clause 6 shall remain in effect.

7 SERVICES

- 7.1 The Company shall provide the Services to the Buyer and deliver any Deliverables to the Buyer in accordance with the Service Specification in all material respects.
- 7.2 The Company shall use its reasonable endeavours to meet any Milestones specified in the Services Specification, but any such dates shall be estimates only and time shall (unless otherwise agreed in writing by the Company) not be of the essence for the performance of the Services.
- 7.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Buyer in any such event.
- 7.4 The Company warrants to the Buyer that the Services will be provided using reasonable care and skill.
- 7.5 The Company shall appoint the Company's Manager in respect of the performance of the Contract, who shall have authority under the Contract to contractually bind the Company on all matters relating to the Contract.

8 BUYER'S OBLIGATIONS

- 8.1 The Buyer shall:
- 8.1.1 ensure that the terms of the Order and the Goods Specification and or the Services Specification are complete and accurate;
 - 8.1.2 co-operate with the Company in all matters relating to the performance of the Contract;
 - 8.1.3 appoint the Buyer's Manager in relation to the Services, who shall have the authority contractually to bind the Buyer on matters relating to the Contract;
 - 8.1.4 provide the Company, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services;
 - 8.1.5 provide the Company with such information and materials as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - 8.1.6 prepare the Buyer's premises for the supply of the Services;
 - 8.1.7 keep and maintain all Company Equipment and Pre-Existing Materials at the Buyer's premises in safe custody at its own risk, and not dispose of or use the Company Materials or Pre-Existing Materials other than in accordance with the Company's written instructions or authorisation;
 - 8.1.8 provide, in a timely manner, the Buyer's Equipment and In-put Material and other information as the Company may reasonably require, and ensure that it is accurate in all material respects;
 - 8.1.9 inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at the Buyer's premises;
 - 8.1.10 ensure that all the Buyer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;
 - 8.1.11 shall (where appropriate) comply with all user instructions and safety recommendations issued by the Company in connection with the Goods, and must install, commission and maintain the Goods

in accordance with generally accepted industry practice, and under the supervision of suitably qualified personnel, and the Company shall not be liable to the Buyer for any loss suffered as a result of the Buyer's breach of this clause 8.1.11

8.1.12 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Company's Equipment, the use of In-put Material and the use of the Buyer's Equipment in relation to the Company's Equipment insofar as such licences, consents and legislation relate to the Buyer's business, premises, staff and equipment, in all cases before the date on which the Services are due to commence.

8.2 If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation ("**Buyer Default**"):

8.2.1 the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Company's performance of any of its obligations;

8.2.2 the Company shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 8.2 and

8.2.3 the Buyer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Buyer Default.

9 **CHANGE CONTROL**

9.1 If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other party in writing (**Change Request**).

9.2 If the Company originates a Change Request, it shall provide, with the Change Request, written details of the impact which the proposed change will have on:

9.2.1 the Services;

9.2.2 the Company's existing charges;

9.2.3 the timetable of the Services (including any Milestones); and

9.2.4 any of the terms of the Contract.

9.3 The Company may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.

9.4 If the Buyer originates a Change Request, the Company shall, as soon as reasonably practicable after receiving the Change Request, provide a written estimate to the Buyer setting out:

9.4.1 the likely time required to implement the proposed change;

9.4.2 details of the impact which the proposed change will have on:

9.4.2.1 the Services;

9.4.2.2 the Company's existing charges;

9.4.2.3 the timetable of the Services including any Milestones; and

9.4.2.4 any of the terms of the Contract.

9.5 Unless both parties consent to a Change Request, there shall be no change to the Services and any other terms of the Contract.

9.6 If both parties consent to a Change Request, it shall be signed by the authorised representatives of both parties, upon which the Change Request becomes a **Change Order**.

9.7 If either party is unwilling to accept a Change Request suggested by the other (or a term of any proposed Change Order), then the other party may require the disagreement to be dealt with in accordance with the

dispute resolution procedure in clause 19.

10 **PRICE**

10.1 Unless otherwise agreed by the Company in writing, the price for the Goods or Services shall be the price previously quoted in writing to the Buyer.

10.2 Where indicated in the Order (or otherwise agreed in writing between the Company and the Customer) charges for Services shall be on a time and materials basis:

10.2.1 the charges shall be calculated in accordance with the Company's standard daily fee rates, as set out in the Company's quotation;

10.2.2 the Company's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day typically from 7.00 am to 3.30pm worked on Business Days;

10.2.3 the Company shall be entitled to charge an overtime rate of 50 per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 10.2.2; and

10.2.4 the Company shall be entitled to charge the Buyer for any expenses reasonably incurred by the individuals whom the Company engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Company for the performance of the Services, and for the cost of any materials.

10.3 The Company reserves the right to:

10.3.1 increase its standard daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. The Company will give the Buyer written notice of any such increase 2 months before the proposed date of the increase. If such increase is not acceptable to the Buyer, it shall notify the Company in writing within 2 weeks of the date of the Company's notice and the Company shall have the right without limiting its other rights or remedies to terminate the Contract by giving 4 weeks' written notice to the Buyer; and

10.3.2 increase the price of the Goods, by giving notice to the Buyer at any time before delivery, to reflect any increase in the cost of the Goods to the Company that is due to:

10.3.2.1 any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); or

10.3.2.2 any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

10.3.2.3 any delay caused by any instructions of the Buyer in respect of the Goods or failure of the Buyer to give the Company adequate or accurate information or instructions in respect of the Goods.

10.4 The price for the Goods and/or Services shall be exclusive of any value added tax and (where appropriate) all costs or charges in relation to packaging, loading, unloading, carriage and insurance and which for the purposes of clarification include a handling charge (to be ascertained by the Company) for the return of Goods to the Buyer or other nominated person or body all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods or at such other time as maybe specified by the Company.

10.5 In addition to the price for the Goods, the Buyer shall pay on demand to the Company the costs and expenses incurred by the Company in obtaining any materials, components and/or equipment acquired in connection with meeting the Buyer's requirements or order or in relation to any Contract which may not be immediately utilised and the acquisition of such said materials, components and equipment has been confirmed by the Buyer signing the Company's "continuity of supply form" or as otherwise may be confirmed by the Buyer.

11 **PAYMENT**

11.1 Subject to clause 11.4, payment of the price for the Goods or Services is due in pounds sterling (or as otherwise stated in the Order or invoice) strictly 30 days from date of invoice.

- 11.2 Time for payment shall be of the essence.
- 11.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 11.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 11.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 11.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of the Yorkshire Bank accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right (at its discretion) to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

12 **INTELLECTUAL PROPERTY**

- 12.1 Unless otherwise specified in the Contract all Intellectual Property Rights and all other rights in the Goods and/or Services shall be owned by the Company and all Intellectual Property Rights and all other rights in the Pre-existing Materials and any Deliverables shall be owned by the Company. Subject to clause 12.2 the Company licenses all such rights in the Goods and/or Services to the Buyer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Buyer to make reasonable use of the Goods and/or the Services.
- 12.2 The Buyer acknowledges that, where the Company does not own any of the Pre-existing Materials, the Buyer's use of rights in Pre-existing Materials is conditional on the Company obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Company to license such rights to the Buyer.
- 12.3 The Buyer warrants that it has the right to license the Company to use any Buyer's Materials in the completion of any Contract and indemnifies the Company for all reasonable costs incurred further to any third party claim for infringement of Intellectual Property Rights further to the Company's use of the Buyer's Materials in accordance with the directions of the Buyer. The intellectual Property Rights in the Buyer's Materials shall remain with the Buyer.

13 **CONFIDENTIALITY AND THE COMPANY'S PROPERTY**

- 13.1 The Buyer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Buyer by the Company, its employees, agents, consultants or subcontractors and any other confidential information concerning the Company's business or its products which the Buyer may obtain.
- 13.2 The Buyer may disclose such information:
- 13.2.1 to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Buyer's obligations under this agreement; and
 - 13.2.2 as may be required by law, court order or any governmental or regulatory authority.
- 13.3 The Buyer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause 13.
- 13.4 The Buyer shall not use any such information for any purpose other than to perform its obligations under this agreement.
- 13.5 All materials, Company Equipment, drawings, specifications and data supplied by the Company to the Buyer (including Pre-existing Materials and the Company's Equipment) shall, at all times, be and remain the exclusive property of the Company, but shall be held by the Buyer in safe custody at its own risk and maintained and kept in good condition by the Buyer until returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.

14 **WARRANTY AND LIABILITY**

- 14.1 The Company warrants that on delivery, and for a period of 12 months from the date of delivery ("warranty period"), the Goods shall:

- 14.1.1 conform in all material respects with their description and any applicable Goods Specification;
 - 14.1.2 be free from material defects in design, material and workmanship;
 - 14.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - 14.1.4 be fit for any purpose held out by the Company.
- 14.2 Subject to clause 14.3, if:
- 14.2.1 the Buyer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 14.1;
 - 14.2.2 the Company is given a reasonable opportunity of examining such Goods; and
 - 14.2.3 the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost,
- the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 14.3 The Company shall not be liable for the Goods' failure to comply with the warranty in clause 14.1 if:
- 14.3.1 the Buyer makes any further use of such Goods after giving a notice in accordance with clause 14.2;
 - 14.3.2 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - 14.3.3 the defect arises as a result of the Company following any drawing, design or Goods Specification supplied by the Buyer;
 - 14.3.4 the Company alters or repairs such Goods without the written consent of the Company;
 - 14.3.5 the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal working conditions;
 - 14.3.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 14.4 Except as provided in this clause 14, the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 14.1
- 14.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Company under clause 14.2.
- 14.6 Nothing in these Conditions shall limit or exclude the Company's liability for:
- 14.6.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 14.6.2 fraud or fraudulent misrepresentation;
 - 14.6.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - 14.6.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - 14.6.5 defective products under the Consumer Protection Act 1987.
- 14.7 Subject to clause 14.6:
- 14.7.1 the Company shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of business, loss of contract, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 14.7.2 the Company's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price paid under the Contract.

14.8 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

14.9 This clause 14 shall survive termination of the Contract.

15 Termination

15.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

15.1.1 the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

15.1.2 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

15.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

15.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;

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

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

15.1.7 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

15.1.8 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;

15.1.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

15.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1.3 to clause 15.1.9 (inclusive); or

15.1.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

15.2 For the purposes of clause 15.1.1 material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

15.2.1 a substantial portion of this agreement; or

15.2.2 any of the obligations set out in clauses 8, 11 and 13

over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

15.3 Without affecting any other right or remedy available to it, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if:

- 15.3.1 the Buyer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
- 15.3.2 there is a change of Control of the Buyer.

16 **CONSEQUENCES OF TERMINATION**

- 16.1 On termination or expiry of the Contract however caused:
 - 16.1.1 the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of the Goods or Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;
 - 16.1.2 the Buyer shall, as soon as reasonably practicable return all of the Company's Equipment, Pre-existing Materials and Deliverables. If the Buyer fails to do so, then the Company may enter the Buyer's premises and take possession of them. Until they have been returned or repossessed, the Buyer shall be solely responsible for their safe keeping.
- 16.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

17 **ASSIGNMENT**

- 17.1 The Company may assign or novate the Contract or any part of it to any person, firm or company.
- 17.2 The Buyer shall not be entitled to assign or novate the Contract or any part of it without the prior written consent of the Company.

18 **FORCE MAJEURE**

- 18.1 The Company reserves the right to suspend the delivery of the of the Goods or the performance of the Services (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, severe weather conditions, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 8 weeks, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

19 **DISPUTE RESOLUTION**

- 19.1 If any dispute arises in connection with this agreement, the managing directors (or equivalent) of the Company and the Buyer shall, within 14 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute. If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (ADR notice) to the other party requesting a mediation. The mediation will start not later than 14 days after the date of the ADR notice.
- 19.2 No party may commence any court proceedings or arbitration in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

20 **GENERAL**

- 20.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 20.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

- 20.3 No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 20.4 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 20.5 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 20.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 20.7 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the jurisdiction of the Courts of England.

21 **COMMUNICATIONS**

- 21.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by email transmission or fax:
- 21.1.1 (In case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
- 21.1.2 (In the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.
- 21.2 Communications shall be deemed to have been received:
- 21.2.1 If sent by pre-paid first class post, two days (excluding Saturdays, Sundays and Bank and Public holidays) after posting (exclusive of the day of posting); or
- 21.2.2 If delivered by hand, on the day of delivery; or
- 21.2.3 If sent by email transmission or fax on a working day prior to 5.00 pm, at the time of transmission and otherwise on the next working day.