

FLIGHT REFUELLING LIMITED T/A COBHAM MISSION SYSTEMS

STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

FRL/PUR/CP001

This Agreement (the "Agreement") is made between **Flight Refuelling Limited trading as Cobham Mission Systems**, a company incorporated in England, whose address is Brook Road Wimborne Dorset BH21 2BJ and fax nr is 01202 880096 ("Buyer") issuing the Order in which these terms are referenced and the recipient company ("Supplier") of such Order. Supplier and Buyer shall be known individually as "Party" and collectively as the "Parties".

1. Definitions

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| "Acceptance Tests" | means such acceptance tests as proposed by or on behalf of Buyer acting reasonably and issued prior to any such acceptance tests being undertaken to determine whether the Works (both individually and collectively with other Works) are in accordance with its specifications and otherwise meets Buyer's requirements as contemplated by this Agreement. |
| "Authorised Procurement Agent" | Shall mean the Buyer's procurement managers and its senior management (Vice Presidents, General Managers and their superiors) that has the authority to bind the company financially. |
| "Base Prices" | means initial prices established and agreed by the Parties in writing for the supply of the Products. |
| "Business Days" | any day except a Saturday, Sunday or public/bank holidays on which the banks in London are open for business. |
| "Buyer Data" | the data supplied or otherwise made available by or on behalf of any member of the Buyer's Group to Supplier's Group or any of Supplier's sub-contractors and the data generated by or stored in the computer systems and telecommunications networks owned or operated by or on behalf of or for the benefit of Buyer to which Supplier or its sub-contractors gain access in connection with the provision of any Works together with any Modifications thereto from time to time made by or on behalf of any person. |
| "Buyer's Property" | means any dies, tools, patterns, plates, artwork, designs, drawings, specifications, free issue materials or other documents or items in the possession or under the control of Supplier which have either been supplied by the Buyer to Supplier, or in respect of which the Buyer (subject always to Buyer's rights under this Agreement) has paid Supplier the entire NRE Items price. |
| "Change of Control" | means for any entity, any change in the: <ul style="list-style-type: none"> (a) ownership or control (directly or indirectly) of more than fifty per cent (50%) of the voting capital of the entity; or (b) ability (directly or indirectly) to direct the casting of more than fifty per cent (50%) of the votes exercisable at general meetings of the entity; or (c) right (directly or indirectly) to appoint or remove directors of the entity holding a majority of voting rights at meetings of the board of directors of the entity. |
| "Confidential Information" | means any information received by one Party (the "receiving Party") from the other Party (the "disclosing Party") and which the receiving Party has been informed, or has a reasonable basis to believe, is confidential to the disclosing Party, unless such information: (i) was known to the receiving Party prior to receipt from the disclosing Party; (ii) was lawfully available to the public prior to receipt from the disclosing Party; (iii) becomes lawfully available to the public after receipt from the disclosing Party, through no act or omission on the part of the receiving Party; (iv) was rightfully communicated by a third party to a receiving Party free of any obligation of confidence subsequent to the time of the originating Party's communication thereof to the receiving Party; or (v) is independently developed by an employee or agent of the receiving Party who has not received or had access to such information. |
| "Corrective Action Notice" | means a notice issued by Buyer to Supplier setting out remedial or corrective action to be undertaken by or on behalf of Supplier to ensure compliance with the obligations of Supplier under this Agreement or an Order. |
| "Developments" | means any Product, development documentation, information, materials, plans, drawings, reports or the like conceived during the course of the performance of an Order. |
| "Direct Competitor" | means any third party in the defence, aerospace, intelligence or surveillance market selling products in competition with Buyer or its Affiliates. |
| "Documentation" | means the user guides and user manuals (as appropriate) for the Products, regardless of whether in printed and/or machine-readable format. |
| "Forecast" | means a rolling estimate of Buyer's requirements for Products from current Orders up to a forward looking period of at least nine (9) months and preferably twelve (12) months including the quantities to be manufactured and the requested delivery date. |
| "Group" | means in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company (each an "Affiliate"). "Holding company" and "subsidiary" are as defined in section 1159 of the Companies Act 2006. |

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| "Intellectual Property Rights" | means, to the extent that any of the following are recognized in any jurisdiction, any industrial and intellectual property and/or proprietary rights whether registered or unregistered, legal or beneficial, including but not limited to: copyrights, patent rights (including applications for patent protection), publicity rights, trade secret rights, registered or otherwise protected trademarks, trade names and service marks and protections from trademark dilution, database rights and semiconductor topography rights. |
| "Liability" | any liability whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise in respect of any loss or damage howsoever caused, and including without prejudice to the generality of the foregoing any liability arising under any indemnity. |
| "Modification" | means all translations, adaptations, arrangements, derivative works, developments, enhancements, error corrections, fixes, versions, upgrades, updates, new releases and, without limitation, by reference to the foregoing, modifications (and "Modified" shall be construed accordingly). |
| "Non-Recurring Expense Items" or "NRE Items" | means any unique labour, tooling, jigs, fixtures, stencils, or other items utilized for the manufacture of Works that are separately priced in an Order for the Works, amortised in the Base Price of the Works or detailed in a separate NRE Items Order related to the Works. |
| "Order" | shall mean an order placed by Buyer for Works. |
| "QAM 10" | means Buyer's Quality Assurance Manual document, the latest version of which is available at http://www.cobham.com/cms/wimborne/suppliers |
| "Tools" or "Tooling" | means tools for use with or created pursuant to the Works |
| "Traceable" | means that all the Works, sub-assemblies and the components contained therein supplied by Supplier shall be accompanied with original authentic certificates of conformity from the manufacturer of the original component or if not accompanying the component delivered to the Buyer are in the possession of Supplier as specified by the Buyer's specification. |
| "Third party Products" | means the software and operating system software necessary to run the Products. |
| "VMI" | means Vendor Managed Inventory. |
| "Works" | shall mean the goods and/or services as specified in the Order or any part thereof. |

2. Agreement

- 2.1 Supplier shall provide the Works to Buyer as agreed to from time to time by the Parties pursuant to Orders on the terms set out herein. Each Order shall include a reference, and be subject, to these terms and conditions and to the exclusion of all other inconsistent terms and conditions and each Order incorporating these terms and conditions shall constitute an Agreement separate from all other Orders. To the extent that there are any conflicts between this Agreement and the Order then the latter shall prevail. This Agreement and any documents expressly incorporated herein by reference comprise the entire Agreement between the Parties in relation to the matters referred to herein and supersede any previous Agreement, arrangement, communication and negotiation (whether written or oral) between the Parties relating thereto. In entering into this Agreement no Party may rely on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement) made by or on behalf of the other Party on or before the date of this Agreement (and such are agreed to be merged into, and superseded by, the terms hereof), and each of the Parties waives all rights and remedies which, but for this clause, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance, provided that nothing in this clause shall limit or exclude any liability for fraud.
- 2.2 This Agreement is being entered into for and on behalf of Buyer's Affiliates such that each of the Buyer's Affiliates at its election, may receive the Works under this Agreement and/or benefit from them and each obligation, assurance, warranty, indemnity, exclusion or limitation expressed to be given in favour of Buyer shall be deemed to be given to Buyer for itself and for each of its Affiliates.

3. Ordering Process

- 3.1 Supplier will procure all components necessary to fulfil Forecasts and Orders issued in accordance with this Agreement and to reasonably ensure sufficient capacity is available to achieve the quantities and delivery dates specified in such Forecasts and Orders, at lead-times reasonably consistent with the lead-times of such components at the time of order. The Buyer acknowledges that Supplier may be required by its suppliers to procure components in minimum buy quantities and that such quantities may exceed the Buyer's actual demand for such components. Supplier may also purchase components in economic order quantities with the prior written approval of the Buyer and provided that Supplier has notified the Buyer of any commercial obligations or restrictions involved in such written approvals.
 - 3.1.1 The Buyer will issue, and Supplier will accept or reject in writing in accordance with Section 3.1.3 below, Orders for all Works covered by this Agreement. Each Order shall contain the following information:
 - 3.1.1.1 a description of the Works by part number;

- 3.1.1.2 the quantity of the Works (with the exception of blanket Orders);
- 3.1.1.3 the scheduled delivery date or delivery schedule;
- 3.1.1.4 the location to which the Works are to be delivered; and transportation instructions if other than defined by this Agreement;
- 3.1.1.5 Price, including unit, extended and Order total prices;
- 3.1.1.6 and any other special terms or requirements.
- 3.1.2 Orders shall comply with the price and Forecast (or Works lead-times agreed by the Parties in writing when there is no Forecast). The Buyer shall allow for the Forecast (or lead-time when there is no Forecast) when setting the delivery date. Where Buyer fails to allow for the Forecast (or lead-times when there is no Forecast), the clause 3.1.4 shall apply.
- 3.1.3 Order process is as follows:
- 3.1.3.1 Each Order shall be issued by the Buyer by fax, registered postal mail or legally binding registered email to Supplier. The Order will be deemed as received by Supplier on the day issued if by fax or legally binding registered email and two days after issue in the event of postal mail;
- 3.1.3.2 The Order will be checked by Supplier; and
- 3.1.3.3 All Orders shall be confirmed or acknowledged in writing as accepted or rejected by Supplier within five (5) working days of receipt. If Supplier does not accept or reject the Order within the said five (5) day period, the Order shall be deemed accepted by Supplier. Should Supplier commence work under the Order, Supplier shall also be deemed to have accepted the Order by performance.
- 3.1.3.4 If there is a conflict of terms the order of precedence shall be (in descending order):
- 3.1.3.4.1 the typewritten provisions of the Order;
- 3.1.3.4.2 Customer Flow Down terms (if applicable);
- 3.1.3.4.3 QAM 10 latest issue;
- 3.1.3.4.4 this Agreement;
- 3.1.3.4.5 any appendices, programme schedules or other written agreements attached to this Agreement as agreed by both Parties; and
- 3.1.3.4.6 the specification.
- 3.1.4 Supplier shall accept all Orders that are placed consistent with Buyer's Forecasts and otherwise in accordance with the lead-times as agreed by the Parties. In the event that Supplier is unable to meet the delivery date set forth in an Order because the demand under the Order exceeds the previously Forecasted demand or if within the Forecast but the delivery date is shorter than the lead-time, the Parties shall negotiate in good faith to resolve the matter. Supplier will accommodate Orders that are within 25% of the previously Forecasted demand.
- 3.1.5 Supplier will supply Works strictly in accordance with the Buyer's requirements as detailed in this Agreement, the specification and the Order. Buyer may at any time request changes in writing relating to the Order, including changes in the drawings or specifications, method of shipment, quantities, packing or time or place of delivery. If such changes result in an increase in cost or time required for performance of the Order, an equitable adjustment will be made to the price, delivery schedule or both. Any such claim or adjustment must be approved by Buyer's Authorised Procurement Agent in writing before Supplier proceeds with such changes. Any adjustment should not be applied to elements of the Works unaffected by such a change.
- 3.1.6 Where the Buyer deems it necessary and solely when an Authorised Procurement Agent provides written instructions to do so, the Supplier shall undertake a Change without approval of such claim. Where Buyer elects to take up this option the Buyer shall pay for the cost of such change providing that the Supplier can demonstrate that the price of the change is costed at the same profit rate as the Base Price against a legitimate cost base.
- 3.1.7 Where there is a dispute on the change the Buyer shall have the right to require the Supplier to undertake the change in accordance with clause 3.1.5. If Supplier successfully asserts the change is a change to the Works the Buyer's maximum liability is to pay for the change in accordance with clause 3.1.6
- 3.2 For the avoidance of doubt, neither this Agreement nor any Order shall be amended except by an official amendment issued by the Buyer and accepted by the Supplier in accordance with Clause 4.8.
- 3.3 The Parties acknowledge that the pre-printed provisions appearing on the reverse of, or attached to, an Order, an Order acknowledgment, or invoice shall be deemed deleted and of no effect whatsoever. Supplier shall ensure that no such pre-printed terms are on an Order acknowledgement sent to the Buyer.
- 3.4 Under this Agreement, Orders will be issued by each Buyer Affiliate and all rights and obligations of the Buyer under this Agreement and the Order shall pass to such Affiliate and for the purposes of that Order such Affiliate shall be deemed to be the Buyer for the purposes of this Agreement. Upon Supplier's acceptance of Orders from a Buyer's Affiliate, such Orders shall be governed exclusively by this Agreement.
- 4. General**
- 4.1 Any notice to be given hereunder shall be in writing and sent to the relevant Party's General Manager and Company Secretary at its address or fax number contained above (or such other address or fax number as shall have been notified to the other Party in writing), and shall be delivered or sent:
- 4.1.1 by fax, provided that the transmission note shall be retained for proof of delivery and provided also that a confirmation copy shall also be sent by first class post; or
- 4.1.2 in the case of a notice between Parties whose respective addresses for service are in the same country, by registered or recorded delivery post or local equivalent postal service which provides written evidence of delivery; or
- 4.1.3 in the case of a notice between Parties whose respective addresses for service are in different countries, by courier provided that such courier obtains a signature on behalf of the recipient by way of:
- 4.1.3.1 acknowledgment of receipt and
- 4.1.3.2 evidence of the date and time of receipt.
- 4.2 Such notice shall be deemed to have been given:
- 4.2.1 in the case of a notice sent by fax, at the start of the first normal business day in the country of receipt following the date of transmission as such date is evidenced by the transmission receipt;
- 4.2.2 in the case of a notice sent by post in accordance with clause 4.1.2, 48 hours after the date on which the registered or recorded delivery letter including such notice is posted; and
- 4.2.3 in the case of a notice which is delivered by courier in accordance with clause 4.1.3, when it is delivered to the appropriate address, as evidenced by the signature referred to in clause 4.1.3.
- 4.3 Neither Party shall in any manner assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party, except as expressly permitted under the terms of this Agreement.
- 4.4 The relationship of Buyer and Supplier under this Agreement and the Order is intended to be that of independent contractors. Nothing contained in this Agreement or the Order shall be construed as creating a partnership, joint venture, agency, trust, or other legal association of any kind between the Parties. Except as specifically provided in this Agreement, neither Party shall act or represent or hold itself out as having authority to act as an agent or partner of the other Party or in any way to bind or commit the other Party to any obligations. Any such act shall create a separate liability in the Party so acting to any and all third Parties affected thereby. The rights, duties, obligations and liabilities of the Parties shall be several and not joint or collective, each Party being individually responsible only for its actions and the obligations as set forth in this Agreement and the Order.
- 4.5 A person who is not a Party to this Agreement may not enforce any of its terms.
- 4.6 If any provision of this Agreement or an Order is found invalid or unenforceable, the remaining provisions will be given effect as if the invalid or unenforceable provision were not a part of this Agreement or the Order (as the case may be).
- 4.7 All Documentation provided pursuant to this Agreement or an Order shall be in English.
- 4.8 Neither this Agreement nor an Order may be varied or amended except in writing and signed by a duly authorised officer of each Party.
- 4.9 The headings contained in this Agreement and an Order are for reference only and shall not be used in its construction or interpretation. The provisions of this Agreement and the Order shall be construed and interpreted fairly and in good faith to both Parties without regard to which Party drafted the same.
- 4.10 References to any gender includes any other gender and the plural shall include the singular and bodies corporate shall include unincorporated bodies and (in each case) vice versa.
- 4.11 Reference to any statute, enactment, ordinance, order, regulation or other similar instrument shall be construed to include a reference to the statute, enactment, ordinance, order, regulation or instrument as from time to time amended, extended, re-enacted or consolidated and all statutory instruments, orders, regulations or instruments made pursuant to it.
- 4.12 No failure or delay by either Party to exercise any right, power or remedy under this Agreement will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.13 The Supplier shall not make any press release or public announcements relating to this Agreement or its subject matter including but not limited to external promotional or marketing material, without the specific prior written consent of the other, which consent shall not be unreasonably withheld or delayed.
- 4.14 During the term of this Agreement and for one year after termination or expiration of this Agreement, Supplier shall not either directly or indirectly employ, or solicit to employ, or cause to be solicited for employment, persons employed by Buyer at the relevant time, without Buyer's prior written consent. As to employees who left the employ of Buyer prior to termination of this Agreement, Supplier shall not, directly or indirectly, employ or otherwise contract such former employee of Buyer until one year after the former employee's termination or separation from Buyer, except with Buyer's written consent.
- 4.15 Supplier undertakes to inform Buyer immediately of any changes in ownership or control of Supplier and of any change in its organization or method of doing business that might affect the performance of Supplier's duties under this Agreement or an Order.
- 4.16 This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- 4.17 The applicable terms in clauses 2, 4, 5, 6, 9, 10, 11, 12, 13.2, 15, 16, 17, 19, 20.8, 21, 22, 24, 25, 26, 27, and 28 shall survive termination or expiration of this Agreement.
- 4.18 Supplier shall at all times comply with all laws and regulations applicable to the provision of the Works (including any evolution thereof) to Buyer and any other laws pertaining to compliance with this Agreement and the Order and obtain all permits, registrations and approvals of governmental authorities and/or standard setting agencies that are necessary or advisable (in the judgment of Buyer or Supplier) in respect of the Works.
- 4.19 Each Party hereby represents that it has the corporate power and authority necessary to execute this Agreement.
- 5. Law**
- The formation, existence, construction, performance, validity, interpretation and all aspects whatsoever of the Agreement or an Order or of any term of the Agreement or an Order including any non-contractual obligations arising out of or in connection with the Agreement or an Order will be governed by the laws of England and Wales.
- 6. Disputes**
- 6.1 The intent of the Parties is to identify and resolve disputes promptly. Each Party agrees to perform as follows:
- 6.1.1 to notify the other Party of any dispute in reasonable detail as soon as possible after any dispute arises;
- 6.1.2 to negotiate in good faith to seek to resolve the dispute.
- 6.1.3 If a Dispute is not resolved within thirty days of it arising, either Party shall be entitled to refer to and finally resolve such Dispute by arbitration under the LCIA Arbitration Rules (for the purpose of this clause, the Rules). The Rules are incorporated by reference into this clause and capitalized terms used in this clause which are not otherwise defined in this Agreement have the meaning given them in the Rules. The number of arbitrators shall be three (the Tribunal). The Parties shall each nominate one arbitrator for appointment by the LCIA. The two arbitrators nominated by the Parties shall jointly nominate the Chairman for appointment by the LCIA. Any requirement in the Rules to take account of the nationality of a person considered person considered for appointment as an arbitrator shall be dis-applied and a person may be nominated or appointed as an arbitrator (including as Chairman) regardless of his nationality. The seat, or legal place of arbitration, shall be London, United Kingdom. The language used in the arbitral proceedings shall be English. All documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by a certified English translation. Witnesses who are unable to speak English shall be permitted to give evidence through a translator. Unless the parties agree to extend this period, the Tribunal will render its award in writing as soon as is reasonably practicable of the close of the hearing. In no event shall the Tribunal have the right or power to award punitive or exemplary damages. The jurisdiction of the Courts of England and Wales is excluded.
- 6.2 If, following the time specified for service of the Statement of Case, the Statement of Defense, the Statement of Reply/Defense to Counterclaim and/or the Statement of Reply to Defense to Counterclaim, as applicable (the Statements), it appears to the Tribunal that there is or may be no real prospect of succeeding on any or all of the claims made in the Statements or of successfully defending any or all of the claims made in the Statements, the Tribunal may determine such claim(s) by a summary

- procedure if it considers that it is in the interests of justice to do so. In the event that a summary procedure is adopted, the Tribunal shall proceed to determine such claim(s) as soon as reasonably practicable. The Tribunal may call for further short written submissions in relation to such claim(s) and shall only hold an oral hearing to determine such claim(s) if it feels that it is necessary to do so. The Tribunal may decide to determine only certain claims advanced in the arbitration by the summary procedure.
- 6.3 Service of any Request for Arbitration made pursuant to this clause shall be by written notice in accordance with Clause 4.1. This Clause 6.3 does not affect any other method of service allowed by law.
- 6.4 This Clause 6 will not prevent a Party ("the affected Party") from:
- 6.4.1 seeking injunctive relief in the case of any breach of threatened breach by the other Party of any obligation of confidentiality or any infringement by the other Party of the affected Party's Intellectual Property Rights;
 - 6.4.2 commencing any proceedings where this is reasonably necessary to avoid any loss of a claim due to the rules on limitation of actions; or
 - 6.4.3 commencing proceedings in the case of non-payment of an undisputed invoice.
- 7. Import/Export**
- 7.1 Supplier shall promptly notify Buyer of any export restrictions that may apply to the Works supplied under the Order, which shall include but not be limited to:
- 7.1.1 United States, including without limitation the International Traffic in Arms Regulations (ITAR) (22 C.F.R. Parts 120-130), the U.S. Export Administration Regulations (15 C.F.R. Parts 730 - 774) and the economic and trade sanctions administered by the U.S. Department Treasury Office of Foreign Assets Control;
 - 7.1.2 the United Kingdom and all member states of the European Union, including without limitation Council Regulation (EC) No. 1334/2000; and
 - 7.1.3 all other relevant countries to the supply of the Works. (collectively "Export/Import Law").
- 7.2 Supplier, at its own expense, represents and warrants to comply with all Export/Import Laws. Supplier shall obtain, at its sole expense, any export licenses or other official authorizations and to carry out any customs or similar requirements for the export of any Works covered by the Order. Supplier specifically shall obtain all required authorizations from the U.S. Government before transferring or otherwise disclosing technical data or technology (as those terms are defined in 22 C.F.R. § 120.10 and 15 C.F.R. § 722, respectively), to any Foreign Person (as defined in 22 C.F.R. § 120.16). Where Export/Import Law applies to technical data related to the Order, Supplier shall provide written notification to Buyer before assigning or granting access to a Foreign Person to such technical data. Supplier agrees to bear sole responsibility for all regulatory record keeping associated with the use of licenses and license exceptions/exemptions. Buyer may deem Supplier's failure to comply with the requirements of this clause a material breach of the Order that shall subject Supplier to the termination provisions of clause 20.
- 8. Federal Acquisition Regulation ("FAR")/Defense Federal Acquisition Regulation Supplement ("DFARS")/Defence Contract Conditions ("DFCONs")**
- 8.1 The FAR/DFARS/DFCON clauses listed or referred to in the Order are incorporated in the Order by reference with the same force and effect as if they were included in full text. Unless otherwise expressly noted herein, where necessary to make the DFCON, FAR and DFARS clauses applicable to the Order and to protect Buyer's interest, the words "Government," "Authority," "DOD," "MOD," "Representative" and "Contracting Officer" each shall mean "Buyer" or (when appropriate) "Buyer and the Authority/Representative/Contracting Officer," the words "Contractor" or "Offeror" shall mean "Supplier," and the words "Contract" and "Schedule" shall refer to this "Agreement" or the applicable Order. The definitions outlined herein are intended to create legal relationships between Buyer and Supplier identical to, but not dependent on, the relationship the FAR and DFARS intend to establish between the "Government" and a "Contractor." It is not the intent of Buyer that any such substitution shall result in the disclosure of a Party's proprietary and/or confidential cost and pricing data.
- 9. The Works**
- 9.1 Supplier represents and warrants that it shall provide the Works to Buyer precisely in accordance with this Agreement and the Orders. Supplier further represents and warrants that:
- 9.1.1 it shall use all best skill and care in such provision and shall perform its obligations in accordance with the Order;
 - 9.1.2 title to the Works ordered under the Order shall transfer free from any security interest or other lien or encumbrance;
 - 9.1.3 it has the rights to grant the licence rights set out in this Agreement and in the Order;
 - 9.1.4 that the Works are of good quality, material and workmanship in accordance with best industry practice;
 - 9.1.5 the Works are and will be fit for their intended purpose and use including any purpose and use made known to Supplier by Buyer;
 - 9.1.6 the Works are free from defects in design, materials and workmanship and hazards to health;
 - 9.1.7 the Works are new and not used, refurbished, repaired or reconditioned and not of an age that deteriorates or impairs their usefulness, safety or operation;
 - 9.1.8 the Works do not infringe the rights of any third party;
 - 9.1.9 has developed processes and/or procedures that are adequate to assure that none of the Works, or part or component thereof, or material contained in such Works shall be counterfeit; and
 - 9.1.10 no Works, or part or component thereof, or any material supplied hereunder shall be counterfeit.
- 9.2 Supplier shall deliver the Works CIP Incoterms 2010 to the delivery address stated on the Order unless otherwise specified in the Order. Upon delivery of the Works by Supplier to Buyer, Buyer (or Supplier at the request of Buyer) may perform an Acceptance Test upon such Works. The Works shall be deemed to have been accepted when notified by Buyer in writing, including where applicable that Supplier has overcome any defects.
- 9.3 Supplier shall undertake each Acceptance Test and shall give Buyer and its nominated representatives the opportunity (by giving not less than 10 Business Days' notice in writing) to attend and observe each Acceptance Test in respect of the Works.
- 9.4 No charge shall be made for attendance at any Acceptance Test. Where applicable, Buyer shall notify Supplier in writing as soon as reasonably practicable after the Works pass the Acceptance Test.
- 9.5 Without prejudice to Buyer's right to terminate pursuant to clause 20.1, 20.2, if the Works fail to pass any Acceptance Tests or repeat Acceptance Tests, Supplier shall notify Buyer that the Acceptance Tests have not been passed and Buyer may:
- 9.5.1 require Supplier to conduct, and Supplier shall immediately conduct, free of charge, all such reasonable alterations or modifications to the Works including but not limited to any that the Buyer shall in the circumstances judge necessary to enable repeat Acceptance Tests to be passed and Supplier shall
- subject the Works to repeat Acceptance Tests as soon as possible and in any event no later than 15 days after receipt of such notice from Buyer; or
- 9.5.2 require Supplier to take the actions specified in clause 9.5.1 again; or
 - 9.5.3 accept the Works proposed to be used by Supplier "as is" subject to a reduction in the charges which accurately reflects both the reduced functionality and performance of and any reduced costs of developing, the Works.
- 9.6 The provision of any certificate or evidence (including but not limited to evidence of passing of Acceptance Tests) by Supplier or Buyer or the giving of any approval or consent by Buyer under or in connection with this Agreement shall not be taken as relieving Supplier from any liability arising out of, or in any way connected with, the performance or non-performance of Supplier's obligations (other than the obligation to provide such certificate or evidence, if applicable), pursuant to this Agreement.
- 9.7 Supplier shall immediately upon discovery of the same promptly report to Buyer the extent of any damage or misuse of computer systems, hardware, Buyer Data, Buyer's Property and sites to which Supplier has direct or remote access and any effect that it may or will have on the performance of Supplier's obligations under this Agreement.
- 9.8 Supplier:
- 9.8.1 agrees that title to Works shall pass to the Buyer on delivery unless otherwise agreed in writing; and
 - 9.8.2 grants a worldwide, royalty free, perpetual, irrevocable, non-transferable license to use, distribute and onward develop the software and any utilisation rights of the Works to, Buyer (and its Affiliates) upon delivery or payment, whichever is the earlier. Supplier shall bear the risk of loss and damage to the Works until they are delivered (and off loaded) in conformity to the Order at Buyer's destination specified in the Order. This shall not affect or waive any of Supplier's warranties or other obligations under this Agreement or the applicable Order for, or in relation to, the Works.
- 9.9 When delivering Works that contains software to Buyer, Supplier shall deliver all of the following:
- 9.9.1 the object code for the software;
 - 9.9.2 the source code for the software;
 - 9.9.3 all Developments and Documentation relating to the software;
 - 9.9.4 copies of all applications and tools used in the creation or development of the software;
 - 9.9.5 any password and encryption details necessary to access the software or its source code; and
 - 9.9.6 full details of the software, including full name and version details, design information including module names and functionality, the type of media on which the software is provided, details of any commands required to install and make a backup copy of the software, any compression used in packaging the software, and details of operating systems on which the software runs.
- 9.10 Supplier may not deliver the Works by separate instalments unless agreed in writing by Buyer.
- 9.11 Time for the performance of all obligations of Supplier under this Agreement and Orders is of the essence and Supplier shall complete its obligations in accordance with any delivery date, implementation or project plan agreed between the Parties. If Supplier becomes aware of any matters which may affect the performance of Supplier's obligations under this Agreement, or if it has reason to anticipate the occurrence of such matters, Supplier shall promptly notify Buyer of the matter and the anticipated duration of their impact. The Parties will discuss in good faith a resolution of the matter.
- 9.12 If any services, functions or responsibilities not specifically described in this Agreement are required for the proper performance of Supplier's obligations or use of the Works by Buyer, they shall be deemed to be implied by and included within the scope of Supplier's obligations to the same extent and in the same manner as if specifically described in this Agreement.
- 9.13 Where Supplier has defaulted in its compliance with any of its obligations under this Agreement or an Order, Buyer may issue a Corrective Action Notice to Supplier requiring remedy of such defaulted obligations which may include instructions for Supplier to take such actions as Buyer believes in good faith may remedy such defaulted obligations. Supplier and Buyer agree and declare that a Corrective Action Notice shall not restrict Buyer in or prevent Buyer from serving a termination notice under clause 19 or from issuing a subsequent or other Corrective Action Notice (whether or not by reference to a default or remedial action specified or referred to in any other Corrective Action Notice, or pursuant to which any other Corrective Action Notice was issued, or otherwise).
- 9.14 Supplier shall ensure that each remedial action stipulated in each Corrective Action Notice or agreed pursuant to each Corrective Action Notice has been completed by the deadline specified by Buyer for completion of the remedial action in the Corrective Action Notice or if no deadline is specified within a reasonable time. Performance by Supplier of its obligations under this clause shall be without prejudice to any other rights or claims that the Buyer's Group may have under this Agreement.
- 10. Developments**
- 10.1 The Parties agree that all Intellectual Property Rights in Buyer Data are exclusively vested in Buyer and Buyer's Group and that no member of Supplier's Group shall gain any rights to any Buyer Data or any computer programs (or modifications relating thereto) proprietary to any member of the Buyer's Group nor, except to the extent expressly licensed for use by Supplier in this Agreement, have any right to use or make any modification to any such items.
- 10.2 Supplier shall, and shall procure that its Affiliates shall, observe and perform all requirements and terms as requested by and notified to Supplier by or on behalf of the proprietors of any third party software specified in the Order ("Third Party Software") and shall not cause or permit any member of Supplier's Group or any sub-contractor of Supplier to cause any member of Buyer's Group to breach any of the obligations on the licensee's part specified in any contract for the provision of Third Party Software.
- 10.3 The Parties agree that Supplier shall not gain title to nor, except to the extent licensed by Buyer for use in this Agreement, have any right to use or make any modification in respect of:
- 10.3.1 any software (and Modifications thereto) proprietary to the Buyer's Group; or
 - 10.3.2 the Third Party Software (and Modifications thereto); or
 - 10.3.3 Buyer Data.
- 10.4 All Intellectual Property Rights vesting in either Party prior to the date of this Agreement shall remain vested in such Party notwithstanding any other provision of this Agreement.
- 10.5 All Intellectual Property Rights in any Modification to any Third Party Software (and any associated documentation or materials) created, developed or made by or on behalf of Supplier pursuant to this Agreement shall be owned in each case by the proprietor of the Third Party Software (or associated documentation or materials) to which the Modification relates where the applicable contract for the Third Party Software so requires.
- 10.6 All Intellectual Property Rights in any Developments and other materials such as

- designs, plans, specifications, models, documents, software including (without limitation) source codes and other records or information created, developed or made by or on behalf of Supplier in the performance of the Order or to enable the performance of the Order shall, at the date of the Order or (if later) on creation of the rights, vest in Buyer. Supplier assigns (by way of present and, where appropriate, future assignment) all such Intellectual Property Rights with full title guarantee to Buyer.
- 10.7 Supplier hereby grants, for itself and on behalf of Supplier's Group, to each member of Buyer's Group a non-exclusive, perpetual, world-wide, irrevocable and royalty-free licence (with the right to grant sub-licences) to use, develop and make Modifications in respect of all other materials such as designs, plans, specifications, models, documents, software including (without limitation) source codes and other records or information in which the Intellectual Property Rights are owned by one or more members of Supplier's Group as at the date of the Order that are necessary to enable Buyer's Group to exercise the rights contemplated in this Agreement and undertake the actions specified to be undertaken by Buyer or any of Buyer's Affiliates in this Agreement.
- 10.8 To the extent that Buyer is able to without infringing any right (including, without limitation, any Intellectual Property Rights) of, or becoming liable to make any payment to, any third party, Buyer hereby grants to Supplier and its agents and sub-contractors providing the Works a non-exclusive, royalty-free licence during the Term of this Agreement to use, develop and make Modifications in respect of any Intellectual Property Rights vested in Buyer's Group and which are required or desirable to enable Supplier only for the purpose of performing its obligations under this Agreement.
- 10.9 Supplier's right to use or access any Third Party Software shall be subject to the terms and conditions of such contracts and Buyer shall be under no obligation to procure any right for Supplier, any member of Supplier's Group or any Supplier sub-contractor to use or access any Third Party Software except to the extent agreed between the Parties. Supplier agrees that it will promptly communicate the Developments to the Buyer together with all inventions, programs, improvements, processes, standards, techniques, developments, know how, designs or any other original matters whether capable of registration or not associated with the Works which, at any time during the performance of this Agreement or any Order, Supplier might devise or discover. Supplier further agrees that all such Intellectual Property Rights and all rights throughout the world deriving from the same which arise after this Agreement or any Order has terminated shall vest in Buyer absolutely, as works made for hire.
- 10.10 Supplier shall, both during the continuance and following the termination of this Agreement for any reason whatsoever, at the request and reasonable expense of Buyer, as Buyer may require, apply for, and do all acts and things necessary to obtain registration or other protection in respect of the Intellectual Property Rights in the Developments in any part of the world. Supplier, at its own expense, shall use all reasonable endeavours to procure that any necessary third party shall execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to the rights assigned under this clause 10.
- 10.11 Supplier shall not, at any time, whether during the continuance or following the termination of this Agreement for any reason whatsoever, do anything to affect the validity of any of the Intellectual Property Rights in the Developments and shall, at the discretion and expense of Buyer, render all assistance within Supplier's power to obtain and maintain such Intellectual Property Rights and any extension thereof.
- 10.12 With respect to any moral rights which arise under clause 10.1, Supplier shall procure that all applicable moral rights shall not be asserted by the holder of such rights.
- 11. Support**
- 11.1 In consideration of the fees paid by Buyer, Supplier will:
- 11.1.1 provide support to Buyer in meeting its obligations to its Customers as defined in this clause 11; and
- 11.1.2 offer the Works for sale for a minimum of five (5) years after the completion of this Order, at fair and reasonable prices in accordance with the established Base Price.
- 11.1.3 Supplier shall use best efforts to ensure that there is a continuity of supply of the Works. This shall include, without limitation, product support spares and repair services, technical data, technical support and training as required where base prices have been established, for a minimum of five (5) years after completion of the Order, and at fair and reasonable pricing consistent with the established Base Price of the Works.
- 11.2 Supplier will at no additional fee or sum for the period of three (3) years from date of written acceptance of the Works by Buyer:
- 11.2.1 provide the warranties and representations in clause 9.1; and
- 11.2.2 correct or procure the correction promptly, and no later than five (5) days from date of notification by Buyer to Supplier, of any failures of the Works to perform in accordance with the Order which are identified in writing by Buyer to Supplier. Any correction by Supplier shall be deemed to be Works for the purposes of this Agreement and the Order. Supplier shall be responsible for all costs (including delivery and collection charges) and delays incurred by Supplier and Buyer in respect of any faulty Works or failure to meet Supplier's obligations under this Agreement or any Order; and
- 11.2.3 ensure that the warranties contained in 9.1 are transferable to Buyer's customer and end user.
- 11.3 Buyer may produce maintenance releases of its own proprietary software, which use or are integrated with the Works from time to time, and Supplier shall update the Works to ensure that such updated Works shall operate with Buyer's maintenance releases in the manner that it did with Buyer's original software. Such updated Works will be supplied to Buyer at no additional fee. The Parties hereto shall agree a delivery date for such updated Works, which date shall be no later than three (3) months from date of notification to Supplier by Buyer of its maintenance release schedule.
- 11.4 Supplier shall give Buyer at least thirty (30) days' written notice if it proposes to incorporate the Works in or use the Works in combination with any open-source software, whereupon Buyer may require that Supplier, as soon as practicable and in good faith:
- 11.4.1 provides and discusses with Buyer all reasonable additional information concerning the open-source software including without limitation (except for conditions of confidentiality) the type, proposed use and licence terms;
- 11.4.2 discusses with Buyer any negative potential effects upon the Intellectual Property Rights or the exploitation of Buyer's products; and
- 11.4.3 takes such action as may be reasonably instructed by Buyer to minimize any such negative effects or to remove and replace the open-source software. Irrespective of the above, Supplier shall not use open-source software for any reason whatsoever, if Buyer notifies Supplier in writing of its objection to such use.
- 11.5 Supplier shall not introduce into any of Buyer's or any of Buyer's Affiliates' computer systems anything, including any computer program code, virus, authorisation key, licence control utility or software lock, which is intended by any person to, is likely to, or may:
- 11.5.1 impair the operation of the Works or any other computer systems or programs in the possession of Buyer or any of Buyer's Affiliates or impair the receipt of the benefit of the Works; or
- 11.5.2 cause loss of, or corruption or damage to, any program or data held on any computer systems or other systems.
- 11.6 Supplier shall immediately notify Buyer if any Works and/or Intellectual Property Right or part thereof, shall infringe or breach any law. In the event that any such Works and/or Intellectual Property Right or part thereof shall infringe or breach any law, Supplier shall at no additional cost to Buyer and as soon as is reasonably practicable provide to Buyer replacement Works and/or Intellectual Property Rights which do not infringe or breach the law and which shall perform in a manner identical in all material respects to the Works and/or Intellectual Property Right as it was prior to such replacement.
- 11.7 Supplier may not discontinue the general supply to its customers of goods and services of the type constituting the Works (or any part thereof) during the Term of an Order including any warranty period.
- 11.8 Subject to clause 11.2, Supplier may provide notice of not less than twenty four (24) months of the discontinuance of the supply of parts or components in the Works and during said notice period Supplier shall, at Buyer's sole discretion, either:
- 11.8.1 provide a form, fit and function replacement at no additional cost to Buyer;
- 11.8.2 procure such reasonable last time quantity as directed by Buyer for such parts or components. Unless otherwise agreed between the Parties, Supplier shall procure and store such parts or components at no additional charge to Buyer.
- 12. Quality and Inspection**
- 12.1 Supplier's quality system shall be compliant with the requirements of ISO9001.
- 12.2 Supplier undertakes to work with Buyer to maintain a technical watch for obsolescence on all Works. For the purpose of this Agreement, a technical watch shall be defined as the on-going verification of the forward availability of parts, processes and materials procured from Supplier's subcontract and supply base. This watch shall occur on a quarterly basis.
- 12.3 Supplier will maintain detailed quality control and manufacturing sub-assembly and component Traceability records for the period of at least twelve years from the date of last supply of the Works. After twelve (12) years, Supplier shall either agree to continue holding the records or shall offer Buyer, at no charge, the option to transfer them for archiving or provide electronic copies to Buyer. No record shall be destroyed without Buyer's written approval.
- 12.4 For the purpose of observing the quality and progress of an Order and Supplier's performance of its obligations or of verifying the amount of the price, Buyer and its nominated representatives may at any time during a Business Day and from time to time on 2 Business Days' notice undertake any inspection of any premises and carry out an audit or check of any aspect of performance of this Agreement by Supplier and shall be allowed to observe work being performed by or on behalf of Supplier or its sub-contractors at any premises owned or used by Supplier in connection with the provision of the Works or any other deliverable in order to verify that Supplier is complying with its obligations under this Agreement. Such observation shall occur during Business Days and during hours that are reasonable under the circumstances (which may be outside working hours). Buyer may appoint an appropriate third party (who shall not be a competitor of Supplier) to act on its behalf in connection with its rights under this clause.
- 12.5 If a discrepancy is found between any amounts confirmed to any member of the Buyer's Group by Supplier and the actual amounts for the same period as determined in the course of any inspection made under this clause, Supplier shall reimburse Buyer for all costs reasonably incurred in conducting such inspection including but not limited to travel, accommodation and living expenses of the persons conducting such inspection, for the period of the inspection and the fees and expenses of any third party engaged by Buyer to conduct the inspection.
- 12.6 Without prejudice to Buyer's rights and remedies in or at law (including, without limitation, specific performance or injunctive relief), in equity or under this Agreement and without limiting clause 12.4, if Supplier fails, or if Buyer reasonably believes that Supplier is likely to fail to, perform any of its obligations under this Agreement within the period specified therefor pursuant to this Agreement or, if no period is specified, within a reasonable time, Buyer may, on giving advance notice at any time and for such period as Buyer deems reasonable in the circumstances, observe work being performed by or on behalf of Supplier or its sub-contractors at any premises owned or used by Supplier in connection with the provision of the Works or any other deliverable in order to monitor such work and to provide Supplier with any recommended actions in respect of its or its sub-contractor's performance. Buyer may appoint an appropriate third party (who shall not be a competitor of Supplier) to act on its behalf in connection with its rights under this clause. Supplier shall reimburse Buyer for all costs reasonably incurred in conducting its rights under this clause.
- 12.7 Supplier, at no additional cost to Buyer, shall and shall procure that its sub-contractors shall:
- 12.7.1 comply with all of Buyer's standard policies that are relevant to the supply of the Works and any other on-site regulations specified by Buyer for personnel working at Buyer's premises or relating to accessing any of Buyer's computer systems. Buyer shall provide Supplier with a copy of such policies and standards as they exist at the Order date, and, whenever they are updated, promptly following issue of the updated versions;
- 12.7.2 provide the Works in compliance with all requirements of all applicable legislation from time to time in force and which is or may become applicable to the Works. Supplier shall promptly notify Buyer if Supplier is required to make any change to the Works for the purposes of complying with its obligations under this clause;
- 12.7.3 advise Buyer of and obtain, maintain and observe at its own cost and at no additional charge to Buyer all applicable governmental, statutory, regulatory or other consents, licences, authorisations, waivers or exemptions (including but not limited to third party licences) required by Supplier (unless otherwise agreed in writing by the Parties) in connection with the performance of Supplier's obligations under this Agreement; and
- 12.7.4 promptly notify Buyer of any health and safety hazards that exist or may arise in connection with the supply of the Works.
- 12.8 The Works shall be subject to the quality assurance requirements specified in QAM 10 as amended from time to time.
- 13. Traceability**
- 13.1 Supplier shall have and operate a process to ensure that all Works, sub-assemblies and the components contained therein supplied to Buyer are completely Traceable back to manufacturer by batch or lot or date code.
- 13.2 Supplier shall, unless directed otherwise by the Buyer, procure components from the manufacturer of the components, or through franchised distributors or direct component suppliers. Supplier agrees to indemnify and hold Buyer harmless from and against all costs and expenses for the removal, repair or replacement of counterfeit

components incorporated into the Works sold by Supplier to the Buyer where the counterfeit component was procured by Supplier from a person or entity other than a franchised distributor or direct component supplier or other person or entity pre-approved by Buyer in writing.

13.2.1 Supplier will:

- 13.2.1.1 require that its sub-contractors provide a Certificate of Conformance with each component shipment;
- 13.2.1.2 perform incoming inspections of components and paperwork to ensure conformity to Specification; and
- 13.2.1.3 maintain and document incoming inspection specifications used for each component used in manufacturing the Works. The foregoing obligations of this clause 13.2 shall not apply to components consigned or sold to Supplier from Buyer.

13.2.2 If components are not purchased from an original equipment manufacturer, or a franchised distributor or direct component supplier or are purchased without full traceability and manufacturers' certificates, Supplier will ensure that prior written approval has been obtained from Buyer before using such components and that the approving permit number shall be cross referenced on Supplier's release certification. To obtain Buyer's approval Supplier may have to, at the Buyer's sole option and at Suppliers cost, perform the following:

- 13.2.2.1 check with the manufacturer that the date and batch codes identified on the Certificate of Conformity are genuine; and
- 13.2.2.2 complete or arrange for actual component testing on a representative sample of the components to verify their conformance to specification.

13.2.3 For components purchased from Buyer, Supplier shall maintain the traceability back to the paperwork provided by Buyer as part of the components transfer.

14. Offset Credit and Cooperation

14.1 All offset or counter trade credit value resulting from the Agreement shall accrue solely to the benefit of Buyer. Buyer shall, to the exclusion of all others, be entitled to all domestic and foreign offset credits, or other similar benefits, which may result from the Agreement (including subcontracts (whether domestic or foreign) placed by Supplier pursuant to this Agreement). Under no circumstance can Supplier use these credits/benefits towards any other entities than Buyer. Buyer reserves exclusive right to apply the value of foreign content in the Works or any deliverables to the offset program of its choice.

14.2 Supplier shall also support Buyer, in any manner reasonably requested by Buyer, and at no additional cost to Buyer, in meeting Buyer's offset requirements in the amounts and in the countries specified by Buyer. Supplier shall furnish upon request any certificates or other documents reasonably required by Buyer in fulfillment of Buyer's offset obligations, including, any documents transferring title to the offset credits to Buyer, any documents perfecting any rights granted to Buyer in this section, and take other action as Buyer deems appropriate in order to protect Buyer's interests in offset credits.

15. Buyer Continuous Improvement

15.1 The Parties agree that competitive pressures necessitate a program of continuous improvement. On all manufacturing Orders forecast to last longer than six (6) months in aggregate, each Party shall cooperate in good faith to implement a Works cost reduction program involving new technologies, component cost reduction, productivity, quality and reliability improvements, and manufacturing processes (including cycle time and assembly costs) which are mutually beneficial when all engineering and re-qualification costs are considered. The Parties shall at quarterly meetings conduct reviews with specific emphasis on quality, delivery, and cost improvements. Any cost savings which are achieved by Supplier as a result of implementing cost reductions proposed solely by the Buyer shall reduce the price of the Works by the entire amount of Supplier's cost savings, after Supplier has recovered its NRE Items associated with the cost reduction. Any cost savings which are achieved by Supplier as a result of changes proposed solely by Supplier, or jointly by the Parties, after Supplier has recovered its NRE Items associated with the cost reduction, shall be shared equally by the Parties for a period of twelve (12) months and shall be retained exclusively by the Buyer after twelve (12) months. Notwithstanding the foregoing, cost reductions will commence immediately to reduce total costs of acquisition within an integrated supply chain by actively driving best practice in areas including, but not limited to:

- 15.1.1 simplification of ordering, and billing processes;
- 15.1.2 improved packaging and labeling; and
- 15.1.3 inventory reduction through: application of supply replenishment concepts; direct fulfillment, pull systems where appropriate; logistics solutions, including consignment supermarkets, ship set kitting and VMI; close collaboration on forecasting and planning; and integration of higher level assemblies.

15.2 The Parties will work together to develop a cost model under which the Base Prices for the Works will be agreed. Supplier shall embrace the concept of target costing for new projects. Target costs will be provided for all new enquiries and modifications when known. Regular review meetings will be used to develop the Base Price structure with Supplier prior to any contractual agreement. The cost for volume production for each potential product will be agreed using the framework of this Agreement.

15.3 Supplier agrees that during the Term of this Agreement, if requested by Buyer, the Parties will work together to develop and implement productivity improvements, including but not limited to, value engineering, Kaizen events, and quality improvements for the purpose of reducing Supplier's costs to manufacture the Works and the Parties' transaction costs.

15.4 The Parties agree that during the term of this Agreement, they shall work together to develop and implement a Works lead-time and component lead-time reduction program to reduce the Works lead-times and component lead-times mutually agreed by the Parties commencing immediately upon signature of the Agreement. Works lead-time and component lead-time reduction programs may include, but shall not be limited to initiatives such as security stocking of long lead-time items, lower tier supplier agreements, re-engineering the manufacturing process, and Works redesign. The Parties agree to baseline forward Works lead-times and component lead-times for purposes of benchmarking the success of such programs.

16. NRE and Tooling

16.1 Any Tools or Tooling purchased from Supplier or manufactured by Supplier, the cost of which forms part of an Order, will become the property of Buyer and all rights, title and interest in and to any part of Tooling will pass to Buyer as soon as it is acquired or fabricated in accordance with the Order.

16.2 Supplier shall quote the life of any new Tools prior to these Tools being manufactured. This will be expressed as the number of parts capable of being produced by the Tooling. Supplier will be responsible for the calibration, maintenance and replacement of all Tooling where damage is caused to the Tooling by the acts or omissions of Supplier. Supplier shall transfer to Buyer any transferable warranties on Tooling.

16.3 Unless otherwise agreed between the Parties for extraordinary NRE costs (which will

be discussed by the Parties), all NRE Item costs will be amortised into the Base Price.

16.4 Full NRE Item costs for all Works will be quoted using the Buyer's bid template documents.

16.5 The amortization quantity should be clearly documented on the Order. Once the total amortization quantity for the Works has been delivered, Supplier shall subtract the amortization amount from the Base Price and establish a new Base Price for subsequent deliveries.

16.6 Lead times for all Tooling are to be quoted by Supplier and accompanied by a detailed timing plan.

16.7 Supplier shall be responsible for the routine maintenance, storage, repair, usage, replacement (within their useful life, fair wear and tear excepted) and calibration of all Tooling and Buyer-acquired NRE Items in Supplier's possession for performance of this Agreement. If calibration or other specialist requirements are required outside of routine maintenance, repair or usage and not caused by a lack of care or damage by Supplier, then such costs shall be agreed in advance and paid for separately by Buyer. Equipment not owned by Supplier which requires a National Institute of Standards and Technology traceable certificate of calibration will be quoted and submitted to Buyer for approval prior to submitting equipment to third party calibration. Supplier will track and file calibration certificates and schedules.

16.8 Buyer shall have an option at any time, which shall be exercised by written notice to Supplier, to pay not more than the balance of the outstanding NRE Item cost for its outright ownership. In this event, Supplier shall subtract the amortisation amount from the Base Price and establish a new Base Price for subsequent deliveries.

17. Furnished Buyer's Property

17.1 Buyer's Property furnished to Supplier (where Buyer Property shall include any third party property provided by the Buyer) shall remain the exclusive property of the Buyer. The Buyer may demand possession thereof at any time without notice; however, if such a demand of possession is made and it affects Supplier's cost of performing the Order(s) on which the Buyer's Property is or was to be used, or affects Supplier's ability to meet any delivery dates under such Order(s), then such demand shall constitute a modification for which Supplier is entitled to a price adjustment or delivery schedule adjustment or both.

17.2 Supplier shall maintain and keep Buyer's Property in good condition. The Buyer will compensate Supplier at its normal hourly rates for all calibration, maintenance or repair services to Buyer's Property (excluding Tools, Tooling and NRE Items and other than normal preventative maintenance services or services to correct defects caused by Supplier's act or omissions negligence or wilful misconduct), provided that Buyer approves such services and rates in advance and in writing. Buyer is not required to compensate Supplier for any such services associated with equipment or tooling owned by Supplier and not intended to be sold or otherwise transferred to Buyer.

17.3 Supplier warrants that Buyer's Property, Tools, Tooling and NRE Items shall not be removed from Supplier's premises except on the prior written permission of Buyer. Supplier may remove Buyer's Property, Tools, Tooling and NRE Items from Supplier's premises for purposes of repair provided that Supplier provides advance notice to the Buyer of the anticipated removal.

17.4 Supplier shall keep Buyer's Property, Tools, Tooling and NRE Items separate and apart from its own property and that of other persons and shall clearly mark them as being the Buyer's property.

17.5 Supplier warrants that Buyer's Property, Tools, Tooling and NRE Items shall not be used by Supplier for any purpose other than for the supply of the Works to Buyer.

17.6 Supplier will compile and submit reports on the status of Buyer's Property, Tools, Tooling and NRE Items as reasonably requested by Buyer including details on any repairs and maintenance necessary to maintain supply of the Works to specification.

17.7 Supplier shall be liable to Buyer for any loss of or damage to the Buyer's Property, Tools, Tooling and NRE Items during the time it is in Supplier's possession, custody or control. During such time Supplier shall insure Buyer's Property, Tools, Tooling and NRE Items at full replacement value in the name of and for the benefit of Buyer at Supplier's expense with a reputable insurance provider.

17.8 Supplier waives any lien which it might otherwise have (whether at the date hereof or subsequently) on any of Buyer's Property for work done thereon or otherwise. This condition shall not be construed as a waiver of any other right of recovery of any other charges that may be due to Supplier for such work.

17.9 Supplier shall keep Buyer's Property, Tools, Tooling and NRE Items free of all mortgages, charges or other encumbrances and will procure that any lien over the same is discharged forthwith.

17.10 Supplier shall promptly pay Buyer on demand the full replacement value of any of Buyer's Property, Tools, Tooling and NRE Items which is not provided to Buyer in good condition or satisfactorily accounted for.

18. LIABILITY AND INDEMNITY

18.1 SUPPLIER REPRESENTS AND WARRANTS THAT IT HAS THE AUTHORITY TO PERFORM ALL ITS OBLIGATIONS AND GRANT THE RIGHTS GRANTED PURSUANT TO THIS AGREEMENT OR THE ORDER AND THAT SUCH PERFORMANCE OR THE GRANTING OF SUCH RIGHTS IS NOT IN BREACH OF ANY AGREEMENT TO WHICH IT IS A PARTY OR OTHERWISE BOUND.

18.2 SUPPLIER SHALL BE LIABLE TO BUYER FOR ALL DAMAGES, COSTS, EXPENSES AND ANY OTHER SUMS INCURRED OR CHARGED THAT BUYER MAY SUFFER IN CONNECTION WITH ANY ACTS OR OMISSIONS OF SUPPLIER UNDER THIS AGREEMENT OR THE ORDER.

18.3 SUPPLIER SHALL INDEMNIFY, KEEP INDEMNIFIED AND HOLD HARMLESS BUYER FROM AND AGAINST ANY CLAIMS BY THIRD PARTIES WHICH ARE CAUSED BY OR ARISE OUT OF OR IN CONNECTION WITH

18.3.1 ANY ACT OR OMISSION OF BUYER CARRIED OUT PURSUANT TO INSTRUCTIONS OF SUPPLIER; OR

18.3.2 ANY BREACH BY SUPPLIER OF ANY TERMS OF THIS AGREEMENT OR THE ORDER

18.4 NOTWITHSTANDING ANYTHING STATED HEREIN NOTHING SHALL EXCLUDE OR LIMIT THE LIABILITY OF EITHER PARTY:

18.4.1 FOR DEATH OR PERSONAL INJURY ARISING AS A RESULT OF ITS NEGLIGENCE OR ITS EMPLOYEES; OR

18.4.2 FOR FRAUD; OR

18.4.3 FOR LIABILITY ARISING PURSUANT TO CLAUSES 7 9 10 13.2 17 18.3 18.7 19

21 22.4, 24 AND 26; OR

18.4.4 FOR GROSS NEGLIGENCE; OR

18.4.5 FOR WILFUL MISCONDUCT; OR

18.4.6 FOR ANY MATTER FOR WHICH IT WOULD BE ILLEGAL FOR THE RELEVANT PARTY TO EXCLUDE OR LIMIT OR TO ATTEMPT TO EXCLUDE OR LIMIT ITS LIABILITY.

18.5 SUBJECT TO CLAUSE 18.4, BUYER'S AGGREGATE LIABILITY UNDER EACH ORDER PURSUANT TO THIS AGREEMENT IS LIMITED TO 100% OF THE TOTAL PRICE WHICH HAS BEEN PAID OR IS DUE TO BE PAID UNDER THIS AGREEMENT.

18.6 BUYER WILL HAVE NO LIABILITY UNDER OR IN CONNECTION WITH THIS

- AGREEMENT OR ANY ORDER IN RESPECT OF:
- 18.6.1 LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF REVENUE, LOSS OF CONTRACTS, LOSS OF GOODWILL, LOSS OF ANTICIPATED EARNINGS OR SAVINGS (IN EACH CASE WHETHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL); OR
- 18.6.2 LOSS OF USE OR VALUE OR DAMAGE OF ANY DATA OR EQUIPMENT (INCLUDING SOFTWARE), WASTED MANAGEMENT, OPERATION OR OTHER TIME (IN EACH CASE WHETHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL); OR
- 18.6.3 ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSS, HOWSOEVER ARISING.
- 18.7 SUPPLIER WARRANTS THAT THE WORKS WILL NOT INFRINGE A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS. SUPPLIER WILL INDEMNIFY, KEEP INDEMNIFIED AND HOLD HARMLESS BUYER AND BUYER'S CUSTOMERS FROM, AND AT ITS OWN COST DEFEND ANY ACTION BROUGHT AGAINST BUYER OR ITS CUSTOMERS BASED UPON, A CLAIM, LEGAL ACTION OR ALLEGATION THAT THE WORKS AND/OR INTELLECTUAL PROPERTY RIGHT CREATED BY SUPPLIER PURSUANT TO THIS AGREEMENT OR THE ORDER (WHETHER CREATED USING BUYER'S SOFTWARE OR CREATED BY ANY OTHER MEANS WHATSOEVER) INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY AND WILL PAY THE AMOUNT OF ANY SETTLEMENT OR THE COSTS AND DAMAGES AWARDED INCLUDING REASONABLE LEGAL FEES (IF ANY) IN SUCH ACTION. FOLLOWING NOTICE OF A CLAIM OR A THREATENED OR ACTUAL ACTION SUPPLIER SHALL (WITHOUT PREJUDICE TO BUYER'S OTHER RIGHTS):
- 18.7.1 PROVIDE FOR BUYER AND BUYER'S CUSTOMERS THE RIGHT TO CONTINUE TO USE THE WORKS AND/OR INTELLECTUAL PROPERTY RIGHT; OR
- 18.7.2 REPLACE OR MODIFY THE WORKS AND/OR INTELLECTUAL PROPERTY RIGHT SO AS TO MAKE IT NON-INFRINGEMENT OF ANY THIRD PARTY RIGHTS AND SUPPLIER SHALL ENSURE THAT SUCH REPLACEMENT OR MODIFICATION SHALL PERFORM IN A MANNER IDENTICAL IN ALL MATERIAL RESPECTS TO THE, WORKS AND/OR INTELLECTUAL PROPERTY RIGHT AS IT WAS PRIOR TO SUCH REPLACEMENT OR MODIFICATION.
- 18.8 SUPPLIER SHALL PURCHASE, RENEW AND MAINTAIN AS NECESSARY SUFFICIENT PRODUCT LIABILITY, PUBLIC LIABILITY, TANGIBLE PROPERTY AND WHERE APPLICABLE, PROFESSIONAL INDEMNITY INSURANCE COVER TO SATISFY BUYER THAT IT IS INSURED TO SUCH AN EXTENT TO ENABLE IT TO SATISFY ANY INDEMNITIES AND LIABILITIES INCURRED UNDER THIS AGREEMENT OR ANY ORDER. SUPPLIER SHALL PROVIDE TO BUYER A COPY OF THE RELEVANT INSURANCE POLICIES ON THE EFFECTIVE DATE, AND SHALL ALSO PROVIDE BUYER WITH A COPY OF THE SAME AT ANY TIME DURING THE CONTINUANCE OF THIS AGREEMENT OR ANY ORDER UPON THE REQUEST OF BUYER AND UPON EACH RENEWAL OF SUCH INSURANCE. FOR THE AVOIDANCE OF DOUBT, EACH SAID INSURANCE POLICY FOR THE ABOVE MUST PROVIDE SUPPLIER WITH COVER OF AT LEAST \$50,000,000 (FIFTY MILLION UNITED STATES DOLLARS) PER EVENT OR SERIES OF RELATED EVENTS.
- 18.9 BUYER SHALL HAVE THE RIGHT TO INTERVENE OR ASSUME RESPONSIBILITY FOR THE CONDUCT OF ANY PROCEEDINGS OR ANY SETTLEMENT OF ANY CLAIM UNDER AN INDEMNITY BEING CONDUCTED BY SUPPLIER AT ANY TIME IF BUYER CONSIDERS THAT TO DO OTHERWISE COULD RESULT IN THE NAME OF ANY MEMBER OF BUYER'S GROUP OR A BUYER CUSTOMER BEING BROUGHT INTO DISREPUTE PROVIDED THAT SUPPLIER SHALL ONLY BE OBLIGED TO INDEMNIFY TO THE EXTENT THAT BUYER CONSULTS WITH SUPPLIER IN RELATION TO SUCH CONDUCT AND DOES NOT PURSUE ANY PARTICULAR STRATEGY IN SUCH CONDUCT OR AGREE TO A SETTLEMENT WITHOUT THE CONSENT OF SUPPLIER (SUCH CONSENT NOT TO BE UNREASONABLY WITHHELD OR DELAYED).
- 18.10 IF AND TO THE EXTENT THAT ANY SUMS PAYABLE BY ONE PARTY TO ANOTHER UNDER THIS AGREEMENT OR AN ORDER BY WAY OF INDEMNITY ARE SUBJECT TO TAX IN THE HANDS OF THE RECEIVING PARTY, THE PAYING PARTY SHALL ON THE RECEIVING PARTY'S DEMAND PAY TO THE RECEIVING PARTY SUCH ADDITIONAL SUM AS SHALL BE REQUIRED TO ENSURE THAT THE RECEIVING PARTY RECEIVES AND RETAINS A NET SUM EQUAL TO THE SUM IT WOULD HAVE RECEIVED AND RETAINED HAD SUCH SUM NOT BEEN SUBJECT TO TAX AND AFTER TAKING DUE ACCOUNT OF ANY RELIEF TO WHICH THE RECEIVING PARTY BECOMES ENTITLED AS A RESULT OF THE LIABILITY WHICH GIVES RISE TO THE INDEMNITY.
- 19. Intellectual Property Rights**
- 19.1 Each Party acknowledges that all Intellectual Property Rights vesting in either Party prior to the date of the Order are and shall remain the sole property of that Party.
- 19.2 Supplier undertakes not to:
- 19.2.1 copy Buyer's Intellectual Property Rights or products (other than as authorized under this Agreement) nor otherwise reproduce the same;
- 19.2.2 utilize, customize, modify or create derivative works of, translate, adapt or vary Buyer's Intellectual Property Rights and products except as expressly permitted in this Agreement or an Order or otherwise agreed in writing between the Parties;
- 19.2.3 disassemble, decompile or reverse engineer Buyer's Intellectual Property Rights or product, except if and to the extent permitted by applicable law; and
- 19.2.4 license or sell any Buyer's Intellectual Property Rights or products, or any part thereof, to any third party.
- 20. Termination**
- 20.1 Supplier may by notice in writing, without prejudice to any of its rights herein, terminate this Agreement or an Order forthwith if Buyer commits a material breach of this Agreement or an Order (as the case may be) which is incapable of remedy, or if capable of remedy, within sixty (60) days of the date of dispatch to Buyer of a written request from Supplier to remedy such breach Buyer fails to remedy such breach.
- 20.2 Without prejudice to any of its accrued rights whether arising out of or in connection with this Agreement or an Order either Party shall be entitled to immediately terminate this Agreement or any Order by notice in writing if the other Party is unable to pay its debts, makes a proposal for a voluntary arrangement or convenes a meeting of its creditors to consider such a proposal, becomes subject to any voluntary arrangement, has a receiver, manager, or administrative receiver appointed over any of its assets, undertaking or income, passes a resolution for its winding-up (save for the sole purpose of a solvent liquidation to effect a reconstruction or amalgamation previously approved in writing by the Party serving notice), is subject to a petition presented to any court for its winding-up, has a provisional liquidator appointed, has a proposal made for a compromise or arrangement under Part 26 Companies Act 2006 (save for the sole purpose of a solvent reconstruction or amalgamation previously approved in writing by the Party serving notice), has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator filed at any court by any person or is the subject of a notice to strike off the register of companies maintained by the relevant authority in the country where that Party is incorporated.
- 20.3 Buyer may by notice in writing, without prejudice to any of its rights herein, terminate this Agreement or an Order forthwith if:
- 20.3.1 Supplier commits a material breach of this Agreement or an Order (as the case may be) which is incapable of remedy or, if capable of remedy, Supplier fails to remedy such breach within thirty (30) days of the date of dispatch to Supplier of a written request from Buyer to remedy such breach. If Buyer reasonably believes that any material breach capable of remedy shall not be remedied within thirty (30) days after Supplier receives a request in writing from Buyer in accordance with this clause 20.3.1 Buyer may terminate immediately the Agreement or an Order (as relevant) by giving written notice to Supplier;
- 20.3.2 there is a Change of Control of Supplier; or
- 20.3.3 Supplier fails to materially comply with a Corrective Action Notice.
- 20.4 Supplier shall promptly notify Buyer in writing if Supplier or any of its Affiliates:
- 20.4.1 purchases a controlling interest, acquires or otherwise has any interest in a direct competitor of Buyer; or
- 20.4.2 is purchased, has any of the controlling interest bought, acquired or otherwise transferred to a direct competitor of Buyer.
- 20.5 This Agreement may be terminated by Buyer serving one months' notice in writing on Supplier. Each Order entered into pursuant to this Agreement will continue until terminated in accordance with the terms of that Order notwithstanding any termination of this Agreement unless Buyer serves notice in writing on Supplier on or before the date of the termination of this Agreement that the Order will terminate on the termination of this Agreement. A right on the part of Buyer to terminate an Order will immediately give rise to a right on the part of Buyer to terminate any or all other Orders.
- 20.6 Buyer is entitled to cancel the Order in whole or in part by giving written notice to Supplier at any time prior to delivery of the Works in which event Buyer's sole liability will be to pay to Supplier fair and reasonable compensation for work-in-progress at the time of cancellation but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.
- 20.7 Buyer is entitled to cancel the Agreement in whole or in part by giving written notice to Supplier at any time. Buyer's sole liability will be to pay to Supplier fair and reasonable compensation for work-in-progress at the time of cancellation but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.
- 20.8 Supplier shall provide or return, as applicable, to Buyer all the Tooling, Developments and any other records or material belonging to Buyer and all copies of any of them by no later than thirty (30) days from the date of expiration or termination of this Agreement for any cause whatsoever, except as may be required for purposes of audit or any dispute.
- 21. Confidentiality Obligations**
- 21.1 Each Party agrees to maintain Confidential Information received from the other in confidence and not to use or disclose such Confidential Information, without the prior written approval of the disclosing Party, except as required to comply with any order of a court or any applicable rule, regulation or law of any jurisdiction. Confidential information shall not include that which:
- 21.1.1 is in the public domain prior to disclosure to the receiving Party;
- 21.1.2 becomes part of the public domain through no unauthorized act or omission on the part of the receiving Party;
- 21.1.3 is lawfully in the possession of the receiving Party prior to disclosure by the disclosing Party; or
- 21.1.4 is independently developed by employees of the receiving Party with no access to the Confidential Information.
- 21.2 In the event that a receiving Party is required by judicial or administrative process to disclose Confidential Information of the disclosing Party, it shall promptly notify the disclosing Party and allow the disclosing Party a reasonable time to oppose such process. Each Party agrees that the Confidential Information shall be disclosed only on a need-to-know basis to its employees, officers, directors, Affiliates, agents, professional advisors or others that are likewise subject to a confidentiality obligation. Each Party will ensure that all such persons to whom it discloses Confidential Information will comply with the provisions of this clause 21. Each Party shall protect the Confidential Information of the other by using the same degree of care, but not less than a reasonable degree of care, to prevent the unauthorized disclosure or use thereof that such Party uses to protect its own confidential information of like nature. The Parties hereby acknowledge that damages may not be an adequate remedy for any breach of this clause 21.1 and that either Party will therefore be entitled to apply for injunctive relief from any court of competent jurisdiction to restrain any breach or threatened breach of this clause 21.1.
- 21.3 Upon termination or expiration of this Agreement, each Party agrees at the request of the other Party to destroy and certify destruction thereof of all Confidential Information in its possession received from the other save insofar as the receiving Party needs such Confidential Information to fulfil its post-termination obligations to the other Party or to customers.
- 22. Price and Payment**
- 22.1 Supplier shall invoice Buyer the charges for the Works as set out in the Order upon Buyer's written acceptance of the Works. Such invoice shall include: Order number, descriptions of the Works, sizes, quantities, prices and totals.
- 22.2 Buyer shall pay to Supplier the property and valid invoice price in the currency of payment all as set out in the Order within seventy five (75) days of receipt of a correct invoice. All payments shall be made to Supplier at the address shown in the Order. Buyer may make adjustments or withhold payment if Buyer reasonably deems that any invoices are not submitted in accordance with this Agreement, due to any shortages or failures, or for any failure to comply with the requirements of the Order.
- 22.3 The price and any other sums payable by Buyer are gross amounts inclusive of:
- 22.3.1 any value added tax and all other foreign, federal, local, sales or use taxes
- 22.3.2 all charges including, but not limited to, packaging material, packing, shipping, loading, carriage, insurance and delivery of the Works to Buyer's specified place of delivery; and
- 22.3.3 any duties, imposts and levies.
- 22.4 Supplier undertakes that the charges under an Order set out complete and accurate fees, charges, expenses and costs payable by Buyer to Supplier in consideration of the grant of licences, provision of the Works and performance of all other obligations specified or referred to in this Agreement or an Order. Buyer shall not be liable for, and Supplier shall indemnify and hold harmless the Buyer against, payment of any fees, charges, expenses or costs of whatever nature including (without limitation) travel, accommodation, document reproduction, transportation, courier, telecommunications or fax charges) in respect of any such licences, Works and obligations except as otherwise agreed between the Parties in writing.

- 22.5 Buyer may invoice Supplier in respect of any refund or over-payment in respect of the charges due pursuant to this Agreement or an Order. Supplier shall pay each correct invoice within 10 Business Days of receipt except to the extent that it disputes any or all of the amount shown on the invoice in which case Supplier shall pay Buyer the amount that is not in dispute but Supplier need not pay the amount that is in dispute until the dispute has been resolved in accordance with clause 6.
- 22.6 In the event of any delay in payment by either Party of any amount owed beyond the period of 30 days from the date for payment the other Party may charge interest at the rate of 4% per annum above the base rate from time to time of the Bank of England until the payment thereof in full.
- 23. Security**
- 23.1 Supplier's employees visiting or working at any of Buyer's premises will comply with the security, confidentiality, safety and conduct policies at such premises as are notified by or on behalf of Buyer to Supplier in writing from time to time and shall conduct themselves in a professional manner.
- 24. Buyer Data**
- 24.1 Supplier shall, and shall procure that Supplier's Group and sub-contractors to Supplier's Group shall, comply with the European Union Data Protection Directive, the General Data Protection Regulation, the Telecoms Data Protection Directive 1997, the Data Protection Act 1998 (the "**Legislation**") in relation to any personal data (as defined in the Legislation) relating to or originating from the Buyer's Group or its employees to which Supplier's Group and its sub-contractors gain access for the purposes of or pursuant to the arrangements contemplated by this Agreement.
- 24.2 Supplier undertakes that except where otherwise agreed by the Parties in writing:
- 24.2.1 neither Supplier's Group nor any of its sub-contractors shall process, or direct the processing of any personal data relating to or originating from Buyer's Group or its employees other than in the UK;
- 24.2.2 Supplier's Group and its sub-contractors each have in place now and shall on a continuing basis take all reasonable technical and organisational measures to keep all personal data relating to or originating from Buyer's Group or its employees secure and to protect the personal data against accidental loss or unlawful destruction, alteration, disclosure or access; and
- 24.2.3 except to the extent otherwise required by law, Supplier's Group and its sub-contractors shall each act in relation to personal data relating to or originating from the Buyer's Group or its employees only in accordance with Buyer's instructions except to the extent that Supplier can show that the instructions are not in accordance with the Legislation.
- 24.3 Supplier acknowledges and agrees that Buyer Data is the exclusive property of the Buyer Group and that:
- 24.3.1 all Intellectual Property Rights in Buyer Data is and shall remain owned by the Buyer's Group notwithstanding any Modifications created or developed to or in respect of Buyer Data by or on behalf of Supplier's Group or its sub-contractors; and
- 24.3.2 none of Supplier's Group or its sub-contractors shall delete or remove any copyright notices contained within or relating to any Buyer Data.
- 24.4 Supplier shall not have any right to nor shall it permit the:
- 24.4.1 use of Buyer Data by any member of Supplier's Group or any sub-contractor otherwise than for the benefit of the Buyer's Group and in accordance with this Agreement; or
- 24.4.2 disclosure of any Buyer Data except to Supplier's employees or permitted sub-contractors of Supplier on a need to know basis directly concerned with the performance of its obligations and Supplier shall maintain and make available to Buyer on reasonable notice a log identifying such Supplier's employees and the extent of their access to Buyer Data from time to time; or
- 24.4.3 unless required by law, disclosure of any Buyer Data to any persons to whom Supplier is able to disclose such Buyer Data in accordance with the terms of this Agreement unless such persons are made aware, prior to disclosure, of the confidential nature thereof and that they owe a duty of confidence to the Buyer's Group in respect of such information and Supplier to use best endeavours to ensure that such persons comply with such duty; or
- 24.4.4 use of Buyer Data by any member of Supplier's Group or any sub-contractor in any way that would be harmful to the Buyer's Group.
- 24.5 If any Buyer Data is lost or corrupted as a result of any act or omission of any of Supplier's Group or its sub-contractors, Supplier shall restore Buyer Data at its own expense to the most recent back-up point. Buyer shall ensure that Buyer Data in its possession or control is backed up regularly in accordance with its policy on performing back-up of Buyer Data.
- 24.6 Supplier shall ensure that each member of Supplier's Group and each sub-contractor used by it who processes personal data (as defined in the Legislation) of the Buyer's Group also enter into an agreement undertaking to Supplier in equivalent terms to the undertakings given by Supplier to the Buyer's Group in this clause.
- 25. Assignment and Subcontracting**
- 25.1 Supplier shall not assign the benefit, delegate or subcontract the burden of this Agreement or any Order (whether in whole or in part) without the prior written consent of Buyer.
- 26. Bribery Act and Corruption**
- 26.1 Supplier understands the provisions of any relevant local laws relating to the prevention of corruption and agrees to comply with them to the extent that they apply.
- 26.2 Supplier shall at all times comply with all applicable laws, regulations and sanctions relating to anti-bribery including but not limited to the Bribery Act 2010 (the "Act").
- 26.3 Supplier shall not engage in any activity, practice or conduct which would constitute an offence either by it or any of its Affiliates under the Act.
- 26.4 Supplier shall comply with Buyer's anti-bribery policy in force from time to time as provided to Supplier.
- 26.5 Supplier shall devise, implement and enforce written policies and procedures constituting adequate procedures under the Act in order to prevent commission of any offence under the Act by:
- 26.5.1 Supplier; or
- 26.5.2 any employee of Supplier; or
- 26.5.3 any of its Affiliates; or
- 26.5.4 Supplier's agents, contractors, professional advisors and associated persons.
- 26.6 Supplier shall promptly produce to Buyer copies of such written policies and procedures on request by Buyer.
- 26.7 Supplier shall ensure that any third party agent or contractor of Supplier involved in the performance of this Agreement does so only on the basis of a written contract which imposes on such person terms equivalent to those imposed on Supplier in this clause 26. Supplier shall be responsible for the observance and performance by such person of the terms of that written contract.
- 26.8 Supplier shall report to Buyer any request or demand for any undue financial or other advantage of any kind received by Supplier in connection with the performance of this Agreement.
- 26.9 Breach of this clause 26 shall be deemed a material breach of this Agreement.
- 26.10 Supplier shall indemnify the Buyer's Group from and against any and all losses, damages, claims, demands, actions, costs, (including costs incurred in preventing, avoiding or mitigating loss), charges, interest, payment actions, proceedings, penalties, fines, adverse judgments, orders or other sanctions, expenses or liabilities (including without limitation lost opportunity costs, additional administrative and management time, loss of anticipated savings and costs and expenses of the Buyer's Group and legal expenses calculated on a solicitor and client basis) suffered, incurred or arising as a result of any breach by Supplier of this clause 26.
- 27. Insurance Proceeds**
- 27.1 Supplier shall promptly, upon written request from Buyer from time to time, provide Buyer with copies of all relevant insurance policies and evidence of payment of premiums due to reasonably satisfy Buyer that insurance has been taken out and is being maintained by Supplier as required pursuant to clauses 17.7 and 18.8 and for the purposes of assessing whether the range and amount of cover is sufficient. The obligations on Supplier in clauses 17.7, 18.8, and this clause 27 are material obligations under this Agreement.
- 27.2 All monies received by Supplier under any policy or policies of insurance in respect of its liabilities under this Agreement or an Order for destruction or damage or loss of any materials or property or such proportion of the monies received as is applicable thereto shall be applied in or towards the replacement or repair of such materials or property and this provision shall not affect any other obligation of Supplier or Supplier's liability under this Agreement or an Order.
- 28. Flow Down Terms**
- 28.1 This contract covers the business relationship between Buyer and Supplier. Customer Flow Down Terms hereby incorporated or otherwise referenced on Orders are incorporated into the Agreement.