



## Standard Contract Terms & Conditions

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## 1. BASIS OF PURCHASE

1.12 THE COMPANY shall purchase and the Supplier will sell the Goods and/or the Services in accordance with the Conditions.

1.2. Except insofar as they are inconsistent with any special terms or conditions contained in the Order these Conditions shall apply to the Contract to the exclusion of any terms and conditions on which any quotation has been given to the THE COMPANY or subject to which the Order is accepted or purported to be accepted by the Supplier.

103. No variation to the Order or these Conditions is acceptable unless agreed in Writing by a Director of THE COMPANY.

1.4. If subsequent to any contract between the Supplier and THE COMPANY into which these Conditions are incorporated any contract for the supply of goods and/or services similar to the Goods and/or Services is made between the same parties whether the same is in Writing or otherwise without express reference to any conditions such contract shall be deemed to be subject to these Conditions.

1.5. Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended re-enacted or extended at the relevant time.

1.6. The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2. DEFINITIONS

2.1. "THE COMPANY" means N-ERGISE Ltd, 5<sup>th</sup> Floor, Havenbride House, North Quay, Great Yarmouth, Norfolk, NR30 1HZ. Company number 09452821 registered in England and shall for the purposes of this agreement be known as THE COMPANY.

2.2. "Acceptance" shall mean a written acceptance issued by THE COMPANY pursuant to clause 4.2.

2.3. "Affiliate" in relation to any corporate entity means and includes a parent company, if any, of that corporate entity and all present and future COMPANY'S in which that corporate entity, or its parent company, individually or collectively, directly or indirectly, through one or more intermediaries, owns or controls 50% (fifty percent) or more of the issued stock having the right to vote for or appoint directors thereof The term "parent company" means any company which directly or indirectly owns or controls 50% (fifty percent) or more of the issued stock having the right to vote for or appoint directors of that corporate entity.

2.4. "Amendment Order" shall mean an authorised change to a purchase order issued pursuant to Clause 11 hereof

2.5. "Certificate of Ownership" shall mean the document issued by Supplier in accordance with Clause 9.4 transferring title in the Work to THE COMPANY

2.6. "Conditions" shall mean these conditions of purchase together with any written amendments thereto agreed by THE COMPANY and Supplier.

2.7. "Dangerous Cargo" and "Dangerous Goods" mean all products, supplies, materials, substances and equipment the handling, packaging, use, transportation or storage of which is controlled, restricted or regulated by any laws or governmental rules or regulations relating to health and safety.

2.8. "Delivery Date" shall mean the date on which the Work is required to be delivered to THE COMPANY as specified in the Order as may be amended in accordance with these Conditions.

2.9. "Indemnified Parties" shall mean THE COMPANY and its and their Affiliates and the directors, officers and employees of any of the foregoing.

2.10. "Order" shall mean the purchase order or the COMPANY'S written order or instruction including these Conditions together with all documents referred to therein as varied by any Amendment Order(s).

2.11. "Price" shall mean all sums payable to Supplier for performance of the Work.

2.12. "Supplier" shall mean the person, firm or company to whom the Order is issued; and such Supplier shall be an independent contractor for the purpose of this Order.

2.13. "The Work" shall mean the goods and/or equipment and documentation to be provided under the Order all as more fully set out therein and as may be amended by any Amendment Order.

2.14. "Goods" means the goods (including any instalment of the goods or any part of them) described in the Order;

2.15. "The Services" means work of any kind carried out by the Supplier.

2.16. 'Company Materials' means materials including without limitation, Specifications and technical data supplied or loaned or paid for by THE COMPANY or made expressly to THE COMPANY'S instructions;



- 2.17. "Contract" means the contract for the sale and purchase of the Goods and/or the supply and acquisition of the Services;
- 2.18. "Delivery Address" means the address stated in the Order;
- 2.19. "Specification" includes any plans, designs, drawings and other documents weight and technical specifications and ratings data or other information relating to the Goods or Services;
- 2.20. "Writing" includes facsimile transmission email and comparable means of communication.

### 3. ORDERS AND SPECIFICATIONS

- 3.1. The quantity, quality and description of the Goods and/or the Services shall be subject to the Conditions specified in the Order and/or in any applicable Specification supplied by THE COMPANY to the Supplier or agreed in Writing by THE COMPANY.
- 3.2. Any Specification supplied by THE COMPANY to the Supplier or specifically produced by the Supplier for THE COMPANY in connection with the Contract together with the copyright design right or any other intellectual property rights in that Specification shall be the exclusive property of THE COMPANY. The Supplier shall not disclose to any third party or use any such Specification for any purposes outside the scope of the Purchase Order,
- 3.3. The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing, supply and delivery of the Goods and the performance of the Services.
- 3.4. The Supplier shall not unreasonably refuse any request by THE COMPANY to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch and the Supplier shall provide THE COMPANY with all facilities reasonably required for inspection and testing,
- 3.5. If as a result of inspection or testing THE COMPANY is not satisfied that the Goods will comply in all respects with the Contract and THE COMPANY so informs the Supplier within 7 days of inspection or testing the Supplier shall, at their own cost, take such steps as are necessary to ensure compliance.
- 3.6. The Goods shall be marked in accordance with THE COMPANY'S instructions and any applicable regulations or requirements of the carrier and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

### 4. ACKNOWLEDGEMENT AND ACCEPTANCE OF ORDER

- 4.1. Supplier shall acknowledge receipt of the Order and any Amendment Order within five working days of receipt thereof.
- 4.2. Supplier's acknowledgement of the Order and any Amendment Order as provided in Clause 4.1 shall be deemed to constitute an acceptance of and an agreement to comply with the Conditions. All figures and proposals submitted by the Supplier to THE COMPANY and all agreements made between the parties hereto prior to the date of this Order are hereby cancelled. No other agreement or understanding in any way modifying or supplementing the Order, nor any promises or representations made by representatives of either party shall be binding unless confirmed in writing and signed by authorised officers of both parties. In the event that Supplier does not acknowledge the Order or Amendment Order as herein before provided, commencement or performance of the Order or Amendment Order shall be deemed to constitute an acceptance of the same and an agreement to comply with the Order.
- 4.3. Any other terms and conditions of purchase to which Supplier may refer are expressly excluded.
- 4.4. Neither allowance of time nor any indulgence granted by THE COMPANY to the Supplier shall affect the rights of THE COMPANY or release the Supplier from any liability under the Order.

### 5. QUALITY AND DESCRIPTION

- 5.1 All Work shall: a) be carried out utilising good engineering practice and conform strictly as to quality and description with the particulars stated in the Order and with all statutory requirements applicable to such Work; b) be in strict compliance with samples, patents, drawings or specifications or other documents, if any, referred to in the Order, c) be capable of the standard of performance and fit for the purpose specified in the Order,
- 5.2 All Work performed pursuant to the Order shall be performed by suitably qualified and competent personnel and all equipment and tools provided hereunder shall at all times be maintained in the operating condition as recommended by the manufacturer. THE COMPANY reserves the right to require the replacement at Supplier's cost of any such personnel, equipment or tools that do not comply with the foregoing provisions.
- 5.3 THE COMPANY shall have the right at any time to call upon the Supplier for evidence or origin of raw materials and parts of the Work.

### 6. PAYMENT

- 6.1 The price shown in the Order cannot be varied except by an Amendment Order.



- 6.2 In consideration of the satisfactory performance of the Work, THE COMPANY shall pay Supplier the Price in the manner hereinafter provided. The making of payment shall be without prejudice to THE COMPANY rights hereunder, express or implied, or at law, nor shall it be deemed to be acceptance of the Work.
- 6.3 Supplier shall send to THE COMPANY a detailed price invoice or invoices as instructed on the Order clearly stating the Order number, the item numbers and the settlement terms and containing all information required to be stated on a tax invoice for V.A.T. purposes. V.A.T., where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 6.4 Unless otherwise stated in the Order THE COMPANY shall pay the Price of the Goods and the Services not later than the end of the month following the month in which THE COMPANY receives a proper invoice or if later after acceptance of the Goods or Services in question by THE COMPANY. Payment shall not operate as a waiver of any of the rights of THE COMPANY under the Order or otherwise.
- 6.5 Unless otherwise stated in the Order all payments shall be made in pounds sterling.
- 6.6 Supplier acknowledges that the rates and prices contained in the Order are sufficient to cover all its obligations whether express or implied under the Order. When the Work or any part thereof is to be performed other than at Supplier's premises, Supplier shall be deemed to have satisfied itself as to all local conditions and other factors as may in any way affect the performance of the Work.
- 6.7 If THE COMPANY shall dispute the amount of any invoice in whole or in part it shall promptly notify the Supplier of such dispute and, pending resolution thereof, shall be entitled to withhold payment of such disputed amount. THE COMPANY shall not delay payment of the undisputed part of an invoice provided that the Supplier shall, prior to payment by THE COMPANY, furnish THE COMPANY with a credit note for the disputed amount which shall include VOA.T., if chargeable, on such disputed amount and provided further that the payment period referred to in Clause 6.4 shall be suspended from the time that THE COMPANY notifies the Supplier of such dispute until THE COMPANY receives the Supplier's credit note, The payment of any individual invoice or the issuing of a credit note by THE SUPPLIER shall not constitute a settlement of any dispute so notified or otherwise waive or affect the rights of the parties hereunder.
- 6.8 No increase in the Price may be made (whether on account of increased material labour or transport costs fluctuation in rates of exchange or otherwise) without the prior consent of THE COMPANY in Writing.
- 6.9 THE COMPANY shall be entitled to any discount for prompt payment bulk purchase or volume of purchase customarily granted by the Supplier whether or not shown on its own terms and conditions of sale.
- 6.10 THE COMPANY shall be entitled to set off against the Price any sums owed to THE COMPANY by the Supplier.
- 6.11 Where Purchase Orders are raised to cover an ongoing scope of work for which the Supplier requires to stage invoice THE COMPANY, the stage invoices shall clearly identify the Purchase Order number, the scope of that particular invoice and the stage of completion of the original Purchase Order.
- 6.12 Risk of damage to or loss of the Goods shall pass to THE COMPANY upon delivery to THE COMPANY in accordance with the Contract.
- 6.13 The property in the Goods shall pass to THE COMPANY upon delivery unless payment for the Goods is made prior to delivery when it shall pass to THE COMPANY once payment has been made and the Goods have been appropriated to the Contract.

## 7 TAXATION

- 7.1 The Supplier shall pay all taxes assessed against the Supplier in connection with the Work and agrees to indemnify THE COMPANY and hold THE COMPANY safe and harmless against any and all claims and liability for income, excess profits, corporation and other taxes, and fines, penalties and interest thereon assessed or levied by the country of operations or any political subdivision thereof or by the Government of any other country against the Supplier or the sub suppliers or against THE COMPANY for or on account of any payment made to or earned by the Supplier or the sub suppliers in respect of the Work. The Supplier further agrees to protect and keep THE COMPANY safe and harmless against all taxes and related fines, penalties and interest Thereon assessed or levied against or on account of wages, salaries or other benefits paid to personnel and all taxes assessed or levied against or on account of any property or equipment of the Supplier or the sub suppliers.
- 7.2 Special conditions applying to Construction Industry Tax Deduction Scheme. Where any contract provides for payment to be made to a Supplier relating to "construction operations" (as defined in section 567(2) of the Taxes Act 1988) the provisions of the said Act shall apply. The Supplier shall advise THE COMPANY immediately of any change to or cancellation of any sub-contractor's tax certificate issued by the Inland Revenue.

## 8 ACCESS FOR EXPEDITING, INSPECTION AND TESTING



- 8.1 THE COMPANY and its representatives, expeditors, inspectors and any inspection authority appointed by THE COMPANY, shall at all times be granted access to any premises (including those of Supplier's sub suppliers) to ensure that the performance of the Work meets the requirements of the Order and to be allowed to inspect and test the Work at any time prior to acceptance or delivery whichever shall be the later. Supplier shall, free of charge, grant all necessary and reasonable facilities to each such authority or representative to determine that the Work is being carried out in accordance with the Order.
- 8.2 THE COMPANY or its representative may reject any Work that it considers to be defective or inferior in quality of materials, workmanship or design. Any Work so rejected shall immediately be replaced or corrected as required by THE COMPANY or its representative, at Suppliers' expense. Supplier shall then re submit work for re inspection and re testing, and Clause 8 shall apply again mutatis mutandis.
- 8.3 Supplier shall make available at its own expense all tools, instruments, apparatus, facilities, services and materials necessary for carrying out tests on the Work as may be required by THE COMPANY, and when requested, the Work shall be completely assembled for such test and at THE COMPANY'S option shall be dismantled for inspection before dispatch.
- 8.4 Scheduling of inspection and/or testing shall be notified to THE COMPANY NOT LESS THAN 5 WORKING DAYS prior to the event.
- 8.5 Inspection or any failure to inspect, expedite, test or accept any Work or any waiver of any rights in respect thereof by THE COMPANY or its representatives shall not relieve Supplier from any of its obligations under the Order, either express or implied including without limitation, its responsibility for any defects subsequently found in materials and/or workmanship.
- 8.6 Supplier shall supply at its own expense certificates of analysis, tests, inspection or origin as may be required by THE COMPANY or required by law which shall in any event be delivered to THE COMPANY no later than the Work to which they relate.

## 9 COMPLETION AND DELIVERY

- 9.1 The Work shall be completed by the delivery date.
- 9.2 The Supplier shall furnish to THE COMPANY a programme of his manufacturing and shipping schedule within two weeks of Order award. Thereafter, the Supplier shall furnish to THE COMPANY at bi-weekly intervals, or more frequently should THE COMPANY so request, in writing, statements in duplicate showing the status of the Order and of any sub order, It is the Supplier's responsibility to immediately advise THE COMPANY of any potential changes to the dates for completion specified in the Order or as amended by the parties in writing. 9.3 If it appears to THE COMPANY that Supplier may not be able to complete and deliver the Work by the Delivery Date or Supplier shall fail so to do, THE COMPANY may terminate the Order or any part thereof in accordance with the provisions of Clause 15.
- 9.04 If THE COMPANY is not able to accept delivery of the Work on the Delivery Date, then the Supplier shall immediately issue to THE COMPANY a Certificate of Ownership, as specified by THE COMPANY, and provided such Certificate of Ownership has been properly provided Supplier shall submit due invoice for payment, as having met the relevant Order conditions. THE COMPANY may suspend for such period as it thinks fit the delivery of the Goods or any undelivered balance of the Goods or the provision of Services if THE COMPANY'S works are temporarily or permanently closed down during the currency of the Contract.
- 9.5 The Work or any replacement thereof or repair thereto shall only be accepted by THE COMPANY after they: (i) have satisfied all requirements and passed all tests specified in the Order including commissioning tests (where specified) and (ii) have thereafter been accepted in writing by and to the full satisfaction of THE COMPANY or its duly appointed representative. THE COMPANY or its duly appointed representative shall be entitled to reject the Work or any replacement or repair as aforesaid at any time prior to Acceptance, notwithstanding delivery. (iii) THE COMPANY shall be entitled to reject any Goods delivered which are not in accordance with the Contract and shall not be deemed to have accepted any Goods until THE COMPANY has had a reasonable time after any latent defect in the goods has become apparent. (iv) The Supplier acknowledges that precise conformity of the Goods with the Contract is of the essence of the Contract and accordingly THE COMPANY shall be entitled to reject the Goods pursuant to Clause 9.5 however slight the breach may be. (v) The Supplier shall undertake and ensure that all applicable test reports, certification and/or other documentation required by the Purchase Order is delivered to the delivery address with the goods. THE COMPANY reserves the right to refuse delivery in the event of non-compliance. All additional and associated costs shall be to the Supplier's account.
- 9.6 To the extent that they do not conflict with the Conditions, Incoterms (latest edition) shall apply to the Order. In the event of conflict, the Conditions shall prevail.
- 9.7 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.



- 9.8 An advice note quoting the number of the Order and (in the case of Goods) giving full particulars of the Goods must accompany each delivery or consignment of the Goods and must be displayed prominently or (in the case of Services) shall be submitted to THE COMPANY immediately upon completion of the Services.
- 9.9 If the Goods are to be delivered or the Services are to be performed by instalments the Contract will be treated as a single contract and not severable.
- 9.10 The Supplier shall supply THE COMPANY in good time with any instructions or other information required to enable THE COMPANY to accept delivery of the Goods and performance of the Services.
- 9.11 If the Supplier is required to supply the Goods and/or provide the Services or fulfil any part of the Order on THE COMPANY'S or a third party's premises the Supplier must at all times comply with THE COMPANY'S or third party's regulations and directions relating to such premises.
- 9.12 If the Goods are not delivered or the Services are not performed on the due date then without prejudice to any other remedy THE COMPANY shall be entitled to deduct from the Price or (if THE COMPANY has paid the Price) to claim from the Supplier by way of liquidated damage for delay two per cent of the Price for every week's delay up to a maximum of ten per cent.

## 10 DEFECTS AND WARRANTY

- 10.1 Supplier shall be responsible for remedying at its own expense (including transportation) any defects that may arise in the Work within twelve months from the date when the Work has been put into service for its specified use, or thirty six months from delivery, whichever is the later. Supplier shall guarantee all remedial work carried out under this warranty for 12 months from the date of repair or date the Work was put back into service, whichever is the later. Where a defect, arises within the aforesaid warranty period(s) but does not become apparent until that period(s) has expired, Supplier's liability shall not cease merely because THE COMPANY has been unable to give notice of the defect to Supplier within the said period. If any defects, which Supplier is obliged to remedy under this clause, are not remedied within a reasonable time or circumstances render it impracticable for Supplier to do the same, THE COMPANY may do so itself or authorise others to do the same and Supplier shall reimburse THE COMPANY for all costs arising there from. Such action shall be without prejudice to any rights which THE COMPANY may have against the Supplier in respect of any breach of these conditions.
- 10.2 If THE COMPANY specifies in the Order a required performance for completed Work, including performance in conjunction with other plant or equipment, Supplier warrants that the Work shall attain such performance notwithstanding that THE COMPANY has specified in the Order details of the manner in which, or the materials out of which, the Work is to be constructed. THE COMPANY is, at all times, relying on the skill and knowledge of Supplier. Should the Work fail to attain the required performance, such failure shall be deemed to be a defect within the meaning of this Clause 10.
- 10.3 This warranty and THE COMPANY'S remedies hereunder are in addition to THE COMPANY'S other rights and remedies existing under the Order or at law.
- 10.4 If so requested by THE COMPANY, Supplier shall provide a Bank Guarantee covering all of the Supplier's warranty obligations under the terms of the Order. The Bank Guarantee shall be from a bank and in a form approved by the THE COMPANY.
- 10.5 The Supplier warrants to THE COMPANY that the Goods will (i) be of satisfactory quality and fit for the purpose held out by the Supplier or made known to the Supplier at the time the Order is placed (ii) be free from defects in design, material and workmanship (iii) (without prejudice to the provisions of Condition 10.5(ii)) be free from defects in material and workmanship for a minimum period of 12 months from delivery (iv) correspond with any relevant Specification or sample; and (v) comply with all statutory requirements and regulations relating to the sale of the Goods.
- 10.6 The Supplier warrants to THE COMPANY that the Services will be performed by appropriately qualified and trained personnel with the utmost care and diligence and to a high standard of quality.
- 10.7 All the Goods supplied under the Contract shall unless otherwise specified in the Order be new and unused, THE COMPANY shall be entitled to reject any Goods the whole or any part of which are second-hand, exhibition or refurbished.
- 10.8 The Supplier shall indemnify THE COMPANY in full against all liability loss damages costs and expenses (including legal expenses) awarded against or paid, incurred or sustained by THE COMPANY as a result of or in connection with (i) the breach of any warranty term or other condition of the Contract by the Supplier (ii) any claim that the Goods infringe or their importation use or resale infringes the patent copyright design right trade mark or other intellectual property rights of any other person except to the extent that the claim arises from compliance with any Specification supplied by THE COMPANY (iii) any liability under the Consumer Protection Act 1987 in respect of the Goods (iv) any act or omission of the Supplier or its employees agents or sub-contractors in supplying



delivering and installing the Goods; and (v) any act or omission of the Supplier or its employees agents or sub-contractors in connection with the performance of the Services.

10.9 THE COMPANY shall be expressly permitted to assign to its customers the benefit of this Clause 10 in whole or in part

## 11 CHANGES

11.1 Supplier shall perform any changes to the Work required by THE COMPANY which may include additions to, or reductions in or variation of the Work. When THE COMPANY is contemplating a change, notice shall be given to the Supplier in writing, who shall promptly advise THE COMPANY in writing of its reasonable effect on Price and Delivery Date.

11.2 Subject to sub clause 11.3, no change shall be accepted by THE COMPANY and THE COMPANY shall not be liable to make any payment therefore to Supplier, unless such change has been authorised by written instruction subsequently confirmed by Amendment Order, issued by the THE COMPANY.

11.3 In the event that the parties are unable to agree the reasonable effect of a change on Price and delivery date, THE COMPANY shall nevertheless have the right to require Supplier to proceed with the Amendment Order forthwith.

## 12 ASSIGNMENT AND SUB ORDERING

12.1 Supplier shall not assign the Order nor sub order any part of the Work other than to those sub suppliers named in the Order, without THE COMPANY'S prior written consent. No assignment or sub order (even with THE COMPANY'S consent) shall relieve Supplier of any of its obligations under the Order.

12.2 Supplier shall, at THE COMPANY'S request, supply THE COMPANY at no extra cost with unpriced copies of all sub orders immediately after such sub orders are placed.

12.3 The Conditions of the Order insofar as applicable shall be imposed in all sub orders entered into by Supplier.

12.4 Supplier shall obtain from all its sub suppliers a warranty in identical terms to that required from Supplier under the Order. Where required by THE COMPANY, Supplier shall enforce its sub order warranties for the benefit of THE COMPANY or at THE COMPANY'S discretion shall include in any sub orders the right to assign such warranties to THE COMPANY and following the said assignment assist THE COMPANY in the enforcement thereof.

12.5 THE COMPANY shall have the right to assign the Order at any time to any of its Affiliates without the prior agreement of the Supplier, in whole or in part Assignment to any other third party shall be subject to the prior agreement of the Supplier. Provided that such assignee agrees to be bound by the terms of this Order, THE COMPANY shall have no further liability hereunder.

## 13 STATUTORY AND SAFETY OBLIGATIONS

13.1 Supplier shall ascertain and comply strictly in respect of and in connection with the execution of this Order and shall ensure that its sub suppliers, their employees, servants, agents, licensees and invitees so ascertain and comply strictly with all Acts of Parliament, statutory provisions and regulations, by laws and regulations of any Local Authority and other Public Body, Common Law duties and any other laws where applicable to this Order and the Supplier's performance hereunder together with the provisions of and agreement of rules or regulations (whether statutory or otherwise) which may be in force at any site where Work is performed hereunder.

## 14 SUSPENSION

14.1 THE COMPANY may at any time and from time to time by written notice require Supplier to suspend performance of the Work, When suspension is ordered due to any act or omission of Supplier other than force majeure as defined in Clause 19.1, then Supplier shall be entitled to no additional remuneration in respect of such suspension. When suspension is ordered for reasons other than the aforesaid, Supplier shall be entitled to reimbursement for reasonable direct substantiated additional costs incurred as a result thereof. When appropriate Supplier shall be granted a reasonable extension of the delivery date to take account thereof.

## 15 TERMINATION

15.1 THE COMPANY may terminate the Order by notice to Supplier in the following events: (i) At any time that it deems appropriate; (ii) Default by Supplier in the performance of the Order; (iii) If Supplier shall, or if THE COMPANY has good reason to believe that the Supplier will imminently go into liquidation, make an arrangement, composition or compromise with its creditors or have a receiver, manager, administrator or administrable receiver appointed in respect of the whole or any part of its assets, or have the equivalent of the above occur to it under the law of any county governing it.

15.2 THE COMPANY shall be entitled to terminate the contract without liability to the Supplier by giving notice to the Supplier at any time if: (i) the Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being a company) becomes subject to an administration order or goes into



liquidation (otherwise than for the purpose of amalgamation or reconstruction); or (ii) an encumbrancer takes possession or a receiver administrator or administrative receiver is appointed of any of the property or assets of the Supplier; or (iii) anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the Supplier; or (iv) the Supplier ceases or threatens to cease to carry on business; or (v) THE COMPANY reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly; (vi) THE COMPANY is affected by any act of God governmental act fire flood strike lockout or any other circumstance which is beyond the reasonable control of THE COMPANY and which prevents THE COMPANY from accepting delivery of the Goods or performance of the Services

- 15.3 In the event of such termination THE COMPANY shall make payment for Work satisfactorily performed at the date of termination and in the case of termination pursuant to 15.1(i) shall make payment of reasonable cancellation charges on sub orders properly placed for the performance of the Work.
- 15.4 Whether or not the Order has been terminated pursuant to Clause 15.1: (i) THE COMPANY shall retain any Work previously supplied under the Order, and shall be at liberty to enter the Supplier's premises or any place where the Work is situated and take possession of the whole or any part of the Work. (ii) THE COMPANY shall be at liberty to execute, or have a third party execute, such part of This Order as Supplier may have neglected or refused to execute and shall be entitled to retain any balance of the Price which may be otherwise due on this Order and apply the same to the completion of Work.
- 15.5 Supplier shall take steps to mitigate costs arising from termination including, but not limited to, using best endeavours to cancel orders and terminate contracts pursuant to the Order.
- 15.6 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected hereby.

## 16 TITLE AND RISK

- 16.1 Title in the Work shall pass to THE COMPANY on the earliest of: (i) appropriation of the Work or any part thereof to the Order; or (ii) payment for the Work (when title shall pass in proportion to the payments made therefore) or; (iii) delivery of the Work by Supplier at the specified delivery point.
- 16.2 Notwithstanding passage of title (in whole or in part) on the occurrence of any of the events in Clause 16.1 above, risk shall remain with Supplier until delivery of the Work to THE COMPANY in accordance with the provisions of the Order. Such acknowledgement of delivery shall be denoted by the signature of a representative of THE COMPANY or confirmation of receipt by the person to whom the Supplier has been instructed to effect delivery of the Work. This confirmation shall only be evidence of receipt, and not of the Work being in the condition specified in the Order.
- 16.3 Where title has passed to THE COMPANY prior to delivery, all materials or equipment to be incorporated in the Work shall be clearly marked as THE COMPANY'S property and shall be stored separately from Supplier's property.

## 17 INDEMNITIES

- 17.1 Supplier hereby agrees to indemnify and hold harmless the Indemnified Parties against any action, liability, cost or expense whatsoever, including legal expenses arising by reason of: (a) the breach of any provisions of the Conditions by Supplier; (b) any action, claim or demand, costs or expenses, arising from or incurred by reason of any infringement or alleged infringement of any letters patent, registered design, trade mark or name, copyright or other protected right in respect of the Work or any other arrangement, system or method of using fixing or producing the Work authorised or recommended by the Supplier. In the event of any action being brought or any claim or demand being made against THE COMPANY on account of any such matter as aforesaid, the Supplier shall be immediately notified thereof and he shall at his own expense fully cooperate with THE COMPANY and shall do all that is reasonably required to defend such, action or to resist such claim or demand. THE COMPANY will not settle any such action or satisfy or compromise any such claim or demand without the consent in writing of the Supplier, such consent not to be unreasonably withheld or delayed; (c) a lien, charge or other encumbrance levied against Supplier on any material, equipment or documents forming part of the Work;
- 17.2 Supplier hereby agrees to indemnify and hold harmless the Indemnified Parties against all claims by any person whatsoever for, and against all liabilities for, any injury, death, sickness or ill health caused to or suffered by Supplier and any of its sub suppliers and its or their employees or any other personnel provided by or through Supplier or its sub suppliers as a result of or arising out of or in connection with the performance of the Order regardless of the cause or reason therefore and regardless of the negligence or breach of statutory duty of the Indemnified Parties and against all costs, charges, expenses, damages and proceedings incurred in connection with such claims or liabilities howsoever arising.





- 17.3 THE COMPANY hereby agrees to indemnify and hold harmless Supplier against all claims by any person whatsoever for, and against all liabilities for, any injury, death, sickness or ill health caused to or suffered by THE COMPANY and THE COMPANY'S employees as a result of or arising out of the performance by Supplier of the Order regardless of the cause or reason therefore and regardless of the negligence or breach of statutory duty of Supplier and against all costs, charges, expenses, damages and proceedings incurred with such claims or liabilities howsoever arising.
- 17.4 Notwithstanding anything contained in the Order to the contrary whether by way of condition, warranty or indemnity and whether contained expressly or by implication no party hereto shall be liable to the other party for any indirect or consequential loss or damage (which terms shall for the purpose of this Clause 17.4 include but not be limited to loss or deferment of profit, loss of trading revenue, loss of production or loss of use and business interruption) suffered or incurred by said other party as a result of the existence of or arising in connection with the performance of the Order howsoever caused including the negligence or breach of statutory duty of said party hereto.
- 17.5 Supplier shall carry and maintain insurance which Supplier is obliged to carry under any applicable laws, and, if requested by THE COMPANY, Supplier shall furnish to THE COMPANY reasonable evidence of such insurance.
- 17.6 Without prejudice to Clause 17.4 but notwithstanding any other provision of the Order, the Supplier shall be liable for its wilful misconduct, namely an intentional and conscious, or reckless, disregard of any provision of the Order. It shall not include any act or omission or any error of judgment or mistake made by the Supplier or its sub suppliers in the exercise in good faith of any function, authority or discretion conferred upon the Supplier.

## 18 INSURANCE

- 18.1 The Supplier shall insure with any insurer approved by THE COMPANY against any damage loss or injury which may occur to any person or the property of any person in consequence of the performance by the Supplier of the Contract including where relevant to the Contract and without prejudice to the generality of the foregoing:
- 18.102 Employer's liability insurance with unlimited indemnity and/or as may be required by statute or similar regulations in the country or countries of work covering personal injury to or death of employees of the Supplier engaged in the performance of the Contract.
- 18.1.3 General third party risk insurance with the minimum indemnity of ten million pounds (£10,000,000) for any one incident such insurance being unlimited in aggregate and covering all operations of the Supplier including inter alia the contractual liability assumed by the Supplier under the Contract.
- 18.1.4 third party and passenger liability insurance and as may be required by statute or similar regulations in the country or countries of use for motor vehicles used by the Supplier in connection with the performance of the Contract. Such insurance shall provide a minimum indemnity of ten million pounds £10,000.00 for loss of or damage to property resulting from any one incident and shall be unlimited in aggregate.
- 18.1.5 Professional Indemnity Insurance to a value of not less than £100,000
- 18.2 The Supplier shall insure with any insurer approved by THE COMPANY against any loss or damage which may occur to Company Materials whilst such Company Materials or any of them are in the custody or control of the Supplier.
- 18.3 The Supplier shall if so requested produce to THE COMPANY certificates of such insurance detailing the types and scope of each insurance cover together with receipt for payment of the current premiums thereof and a statement from the insurers that no such insurance will be cancelled or materially changed during the term of the Contract without the insurer giving not less than thirty (30) days prior written notice to THE COMPANY.
- 18.4 The Supplier shall ensure that all sub-contractors of the Supplier shall maintain such insurance as specified above in relation to the Contract.

## 19 FORCE MAJEURE

- 19.1 Subject to the terms of this Clause, no party hereto shall be responsible for any failure to fulfil any term or condition of this Order (other than failure to make payment of money properly due pursuant to the terms of this Order prior to an occurrence of:- Force Majeure (as hereinafter defined)) to the extent that such failure results from or is caused by an occurrence which is not reasonably within the control of that party acting with reasonable diligence (hereinafter referred to as "Force Majeure"). Force Majeure shall include but not be limited to acts of God or the public enemy, fire, flood, explosion, sabotage, riot, war, official strike not associated with actions taken by THE COMPANY or Supplier, or decree of any Government, but excluding lack of funds. Notwithstanding the above, an occurrence shall not be Force Majeure where the failure of Supplier to fulfil any terms or conditions of this Order is caused by either (i) circumstances that arise from failure of Supplier's sub suppliers to perform their obligations pursuant to the Order except where such failure has been caused by a Force Majeure occurrence as defined above, or (ii) strike action associated with actions or inactions by Supplier or its sub suppliers.



19.2 The party which declares Force Majeure shall immediately notify the other party by facsimile or telex, and, as soon as possible, give full particulars of all circumstances of Force Majeure in writing. The affected party shall take all reasonable steps to remedy or reduce the cause of Force Majeure and limit the effect thereof.

## 20 LIENS & CLAIMS

20.1 Supplier agrees to pay, discharge and hold THE COMPANY harmless from all claims (including legal fees and other expenses incidental thereto), judgments and awards which may arise out of or in connection with this Order. Supplier shall at THE COMPANY'S request, furnish proof satisfactory to THE COMPANY that all such liens, claims, suits, judgment and award have been satisfied or released. THE COMPANY shall also have the right to make payment direct to the holder or holders of any such lien; claim, judgment or award and such payments shall forthwith be reimbursed to THE COMPANY by Supplier on demand.

20.2 Supplier agrees to waive any right to exercise a lien, to make a claim or seek a judgment or award against the Work or any part thereof at any time and to provide a certificate to that effect and acknowledges that its sole right in the event of any failure by THE COMPANY to perform any of its obligations under the Order is to seek damages in respect thereof.

## 21 FREE ISSUE MATERIALS

21.1 Where THE COMPANY provides free issue materials for incorporation in the Work, such materials shall remain the property of THE COMPANY as shall all equipment and documents supplied by THE COMPANY, all of which shall only be used by the Supplier for the Work in accordance with the relevant specification therefore but shall be used at the risk of Supplier and shall (i) be and at all times remain the property of THE COMPANY (ii) be kept in good condition identifiable to Company ownership and segregated from non-Company material (iii) be returned on demand made by or on behalf of THE COMPANY

21.2 All Company Materials supplied to the Supplier must be accounted for monthly and the Supplier shall within fourteen days of receiving notice from THE COMPANY pay to THE COMPANY in full the cost of replacing (i) Company Materials supplied to the Supplier but not accounted for (ii) Company Materials supplied to the Supplier and scrapped by the Supplier where the Supplier is unable to provide good or substantial evidence that THE COMPANY Materials were faulty or defective (iii) Company Material supplied to the Supplier and scrapped due to faulty machining fabrication or manipulation by the Supplier.

21.3 Supplier shall use such materials economically. Any surplus shall be accounted for to THE COMPANY and disposed of in accordance with THE COMPANY'S instructions. Waste, loss of or damage to such materials arising from bad workmanship or failure of Supplier to maintain such materials in good order and condition shall be made good at Suppliers expense, replacements thereof to be of equivalent quality and specification and subject to THE COMPANY 's approval.

21.4 The Supplier shall complete any confirmatory assignment or other document reasonably required by THE COMPANY to confirm THE COMPANY'S title to the intellectual property rights in Specifications pursuant to Condition 3.2.

21.5 The Supplier shall ensure that all Company Materials are marked "Property of ACN Offshore".

## 22 DOCUMENTATION

22.1 The Supplier shall ensure that drawings, blueprints, designs, specifications, all other documents and information are furnished in accordance with the Delivery Date.

22.2 Title to all drawings, specifications and calculations prepared by the Supplier under or in connection with the Order shall belong to THE COMPANY.

22.3 If Supplier considers there is any omission, inconsistency or inaccuracy in design specifications or drawings supplied by THE COMPANY, or that modifications should be made, Supplier shall notify THE COMPANY forthwith.

22.4 Supplier shall prepare at its own expense and submit to THE COMPANY such drawings as THE COMPANY may require. THE COMPANY shall have the right to review or approve all drawings but such review or approval shall not relieve Supplier of any of its responsibilities under the Order. Drawings shall not be departed from without THE COMPANY'S written instructions.

## 23 PATENT AND OTHER PROPRIETARY RIGHTS

23.1 Title to patents and other intellectual property rights created under or arising out of the Work shall either be acquired by or vest in THE COMPANY or its client.

## 24 CONFIDENTIALITY

24.1 Any information relating to, without limitation, specifications, plans, drawings, equipment or designs which is supplied by THE COMPANY to Supplier or prepared by Supplier and the property of THE COMPANY pursuant to Clause 22.2, shall remain the property of THE COMPANY and shall be treated as confidential and shall not be published nor disclosed to any third party or used by Supplier, (except for the purposes of the Order) save with



the consent in writing of THE COMPANY. Notwithstanding the terms of this Clause 24.1, Supplier may disclose such information to a sub supplier for the purposes of performing the Work but only after the obligations of clause 12 have been met.

24.2 The Supplier shall obtain THE COMPANY'S prior approval in writing of any announcement statement or promotion it proposes to issue, whether publicly or within the Suppliers own organisation, in connection with the Order.

24.3 The obligation of the confidentiality contained in Clause 24.1 shall not apply or (as the case may be) shall cease to apply to THE COMPANY'S business technical or commercial information which (i) at the time of its disclosure is already in the public domain or which subsequently enters the public domain other than by breach of these Conditions by the Supplier (ii) is already known to the Supplier (as evidenced by written records) at the time of its disclosure and was not otherwise acquired by the Supplier under any obligations of confidence (iii) is acquired by the Supplier from a third party having the right to disclose the same to the Supplier without breach of obligation owed by that third party to THE COMPANY (iv) is required to be disclosed by applicable law or order of a court of competent jurisdiction provided that prior to such disclosure the Supplier shall advise THE COMPANY of the proposed form of the disclosure.

## 25 LAW AND LANGUAGE

25.1 The Construction, validity and performance of the Order and matters pertaining thereto will be governed in all respects by English Law and shall, unless and except in so far as the parties agree to accept a mediators ruling as binding in accordance with Clause 28 hereof, be subject to the jurisdiction of the English Courts to which jurisdiction both parties hereto irrevocably submit. If the Supplier has no place of business inside the jurisdiction of the English Courts then it shall notify to THE COMPANY the address of agents inside such jurisdiction irrevocably authorised to accept service of any proceedings in any action arising out of the Order.

25.2 All documentation provided by Supplier or its subcontractors in connection with this Order Shall be in the English Language.

## 26 NOTICE

26.1 Notices shall be validly given if sent by telex, facsimile or recorded delivery letter to the parties stated respectively on the Order or to any address subsequently notified in writing by one party to the other party. Notices shall be effective upon receipt during business hours or, if received outside business hours, upon the commencement of the next business day of the recipient.

## 27 PERFORMANCE BY THE COMPANY

THE COMPANY may perform any of its obligations or exercise any of its rights hereunder by itself or through any other company which at the relevant time is its holding company or subsidiary (as defined by section 736 COMPANY'S Act 1985) or the subsidiary of any such holding company provided that any act or omission of any such other company shall be deemed to be the act or omission of THE COMPANY.

## 28 CONCILIATION

28.1 In the event that any dispute or difference of any kind whatsoever which arises between THE COMPANY and Supplier in connection with the Order is not settled by agreement, the parties will attempt in good faith to resolve the dispute through an Alternative Dispute Resolution (ADR) procedure as recommended to the parties by the Centre for Dispute Resolution before pursuing any other remedies available to them. Prior to the commencement of the ADR procedure the parties may agree to accept the mediator's ruling as final and binding, in which event the mediator shall not be an arbitrator and the Arbitration Acts 1950 1979 shall not apply to the mediation. Failing such agreement the mediation shall not be binding, however the parties shall be free to accept the mediator's recommendations or otherwise reach agreement on the resolution of the dispute, which acceptance or agreement shall be reduced to writing and, once it is signed by their duly authorised representatives, shall be binding on the parties. If the matter has not been resolved by an ADR procedure within 14 (fourteen) days of the initiation of such procedure, or any agreement reached there under has not been implemented or complied with in full, or if either party will not participate in an ADR procedure, the dispute may be referred to litigation in accordance with Clause 25.

28.2 Notwithstanding any dispute or difference and unless the Order shall be terminated, in accordance with the Conditions, Supplier shall continue with the due performance of the Order.

## 29 SURVIVAL OF TERMS AND CONDITIONS

29.1 Notwithstanding any other provision of this Order the following clauses shall survive early termination or completion of the Order. e Clause 7 Taxation

- Clause 9 Completion and Delivery
- Clause 10 Defects and Warranty
- Clause 13 Statutory and Safety Obligations



- Clause 16 Title and Risk
- Clause 17 Indemnities
- Clause 21 Free Issue Materials
- Clause 22 Documentation
- Clause 23 Patents and other Proprietary Rights
- Clause 24 Confidentiality
- Clause 25 Law and Language • Clause 28 Conciliation
- Clause 33 Records and Audit
- Clause 35 Conflict of Interest

### 30 ENTIRETY

- 30.1 The Order and documents made a part hereof by express reference constitute the entire agreement between the parties and supersede all prior agreements and understandings written or oral.
- 30.2 Should any error, omission deficiency, ambiguity or contradiction occur within or between the various parts of the Order documentation or between the said documentation and any applicable code, law or statutory regulations Supplier shall immediately and in writing bring the same to the attention of THE COMPANY and shall not proceed or continue with the performance of Supplier 's obligation(s) thereby affected until the written clarification from THE COMPANY has been obtained. Any and all additional costs incurred by either party as a result of the failure of Supplier to notify THE COMPANY as aforesaid shall solely be to the account of Supplier.

### 31 LICENCE OR PERMIT

- 31.1 If the performance of this Order requires Government Licence or other permit to be held or obtained in Supplier's or its sub suppliers ' names, it shall be the responsibility of the Supplier, at no cost to THE COMPANY, to obtain such Licence or permit prior to such performance and maintain it during the relevant period.

### 32 SUPPLIER REPRESENTATION

- 32.1 When indicated on the face sheet of the Order, or should THE COMPANY'S judgment later establish the need exists, Supplier shall provide an onsite representative to assist and advise in the installation, testing and as far as possible in the pre-commissioning of the equipment supplied on this Order.

### 33 RECORDS AND AUDIT

- 33.1 Supplier and its sub suppliers and vendors of any tier shall maintain true and correct records in connection with the Work and all transactions related thereto and shall retain all such records for at least 24 months from the end of THE COMPANY'S accounting year in which Acceptance occurs. THE COMPANY may from time to time and at any time after the date of the Order until 24 months from the end of THE COMPANY'S accounting year in which Acceptance occurs, make an audit of all records of Supplier and its sub contractors and vendors of any tier in connection with payments made on a cost reimbursement basis. Such audit may also cover Supplier's procedures and controls with respect to such reimbursable costs. Upon completion of this audit, THE COMPANY shall pay Supplier any compensation due Supplier as shown by the audit. Any amount by which the total payment by THE COMPANY to Supplier exceeds the amount due Supplier as shown by the audit shall be returned to THE COMPANY. Items of compensation such as fixed percentages or fixed lump sums shall not be subject to audit under this paragraph. Supplier shall assist THE COMPANY in making the above audits. Supplier shall require, and shall require all sub contractors and vendors of any tier to require, in all agreements in connection with the Work the agreement of the parties to the provisions of this clause.

### 34 PACKING. SHIPPING AND INVOICING

- 34.1 The cost of packing, including export packing when specified on the Order, is to be included in the price in this Order; all packing and containers are non returnable.
- 34.2 Where packing is necessary the Work must be carefully and properly prepared, secured and packed by the Supplier to ensure adequate protection until delivered at the place of delivery specified in this Order. In the case of any damage which is attributable to defective and/or insufficient packing the Supplier will be liable for any loss, damage, costs and expenses incurred or suffered by THE COMPANY and shall indemnify and hold harmless THE COMPANY in respect thereof.
- 34.3 Hazardous material or equipment must not be packed with that of a harmless nature. Containers of hazardous material or equipment must be so marked.

### 35 CONFLICT OF INTEREST

- 35.1 No director, officer, employee or agent of THE COMPANY shall give or receive any commission, fee, rebate, gift or entertainment in connection with the Work of other than nominal cost or value or enter into any personal business arrangement with any director, employee or agent of Supplier or its affiliates without the prior written



consent of THE COMPANY. The Supplier shall be obliged to immediately notify THE COMPANY of any breaches hereof and shall promptly thereafter pay to or credit THE COMPANY with any consideration received as a result of such breach.

- 35.2 If any breach of this Clause has occurred prior to the date of this Order which has resulted either directly or indirectly in the parties entering into this or any other Order then THE COMPANY shall be entitled at its sole option to terminate this Order and shall not be obliged to pay the Supplier compensation, remuneration or reimbursement for work done or planned to be done after the effective date of such termination.
- 35.3 THE COMPANY reserves the right to audit any and all pertinent records of the Supplier or sub suppliers to determine whether or not the provisions of Clause 35.1 and 35.4 have been complied with.
- 35.4 The provisions of this Clause 35 shall apply to any sub suppliers and vendors of any tier of Supplier and the Supplier shall be responsible for ensuring compliance herewith.

#### 36 INDEPENDENT CONTRACTOR

- 36.1 The Supplier shall at all times during the term of this Order and whilst performing any Work be an independent contractor and nothing herein or in any other contract or arising out of performance of the Work shall be construed as creating, at any time, any other relationship between the parties. The Supplier, shall, at all times, have complete control over and responsibility for its employees and shall conform to all statutory requirements with respect thereto. Neither the Supplier nor its employees shall represent themselves as being employees or agents of THE COMPANY or be entitled to any of the benefits supplied by THE COMPANY to its employees.

#### 37 EXTENSION OF BENEFITS OF INDEMNITIES

- 37.1 All exceptions, exemption, defenses, immunities, limitations of liability and indemnities granted or provided by the Order or by any applicable statute rule or regulation for the benefit of THE COMPANY shall also apply and be for the benefit of each and all of its officers, directors, employees and agents, and shall also apply and be for the benefit of its Affiliates and their respective officers, directors, employees and agents. THE COMPANY shall be deemed to be acting as agent for the benefit of all such persons but only for the limited purposes of contracting for the extension of such benefits to such persons. If notwithstanding this Clause any such person is sued or through the Supplier in respect of any matter the subject of said exceptions, exemptions, defences, immunities, limitations of liability and indemnities then the Supplier hereby agrees to indemnify THE COMPANY against any payment which THE COMPANY may make to such person in respect of such proceedings and his liability, if any, therein to the extent only that such payment is not more than the Supplier would have been bound to forego, pay, suffer, or incur hereunder if said person had been THE COMPANY and THE COMPANY had been the subject of such proceedings.

#### 38 ETHICAL BEHAVIOUR

- 38.1 The supplier agrees that it has been supplied with and agrees to abide by THE COMPANY'S policy on ethical behaviour in business

