

**GENERAL CONDITIONS OF CONTRACT – GOODS**

1. DEFINITIONS

The terms and expressions used in these Terms and Conditions shall have the meanings set out below:

‘Acceptance Date’ means the date on which the Authorised Officer has accepted the Goods in accordance with clause 13 below.

‘Acceptance’ means that the WEAs Authorised Officer has accepted the Goods as meeting the requirements of the Contract.

‘Authorised Officer’ means Our employee authorised either generally or specifically by Us to sign Our Purchase Order.

‘Authorised’ means signed by One of Our Authorised Officers.

‘Business Day’ means any day other than a Saturday or Sunday or a public or bank holiday in England.

‘Contract Period’ means such period as set out in the Contract or as otherwise may be agreed between the parties from time to time.

‘Contract’ has the meaning given in clause 4 below.

‘Delivery’ shall mean the delivery of goods to the place notified in the Purchase Order.

‘Delivery Date’ means the date specified in the Contract and/or confirmed by the Purchase Order.

‘Delivery Instructions’ means the instructions set out in the Contract for the provision of the Goods.

‘Good Industry Practice’ means the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the supply of Goods similar to the Goods under the same or similar circumstances as those applicable to the Contract.

‘Goods’ means the materials, articles, works and services described in the Contract.

‘Installation’ means the installation of the Goods in the designated location and into the operating environment specified by Us at the site and ‘Install’ shall be interpreted accordingly.

‘Intellectual Property Rights’ means patents, copyright, registered and unregistered design rights, utility models, trade marks (whether or not registered), database rights, rights in know-how and confidential information and all other intellectual and industrial property rights and similar or analogous rights existing under the laws of any country and all rights to apply for or register such rights.

‘Liabilities’ means all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.

‘Premises’ means the location(s) where the Goods are to be delivered.

‘Order Amendment’ means any amendment to a Purchase Order, having precedence over any earlier Purchase Order.

‘Price’ has the meaning given in clause 5 below.

‘Purchase Order’ means Our Authorised Purchase Order in the format set by Us, governed by these general terms and conditions of purchase and raised in accordance with Our eBIS purchase ordering system.

‘Sale of Goods Act 1979’ shall mean the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994.

‘Tender’ means a tender issued by the WEA for the supply of Goods to Us through Our In-Tend online service.

‘Warranty Period’ means the period set out in clause 27 below.

‘Warranty Services’ means such maintenance, repair and other services that are required to be provided in order to reinstate the Goods and/or the Installation or any part thereof, to provide and maintain the Goods in

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accordance with the standards and specifications set out in the Contract.

'WEA means the Workers Educational Association, a company limited by guarantee registered in England and Wales (Company Number 2806910), and registered charity (numbers 1112775; SC039239) with its registered office at 4 Luke Street, LONDON, EC2A 4XW. 'We', 'Us' and 'Our' means WEA.

'You' and 'Your' means the person, firm or company to whom the Purchase Order is addressed and any employees, sub-contractor or agents of said person, firm or company.

- 1.1. Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.
- 1.2. A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

### 2. HEADINGS

- 2.1. The index and headings to the clauses and where applicable the appendices and schedules of these terms are for convenience only and will not affect its construction or interpretation.

### 3. NOTICES

- 3.1. Any notice required by these terms to be given by either party to the other shall be in writing and shall be served personally, by fax or by sending it by registered post or recorded delivery to the appropriate address, fax number or e-mail address notified to each other as set out in the Contract particulars.
- 3.2. Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted; any notice sent by fax will be deemed to have been served 24 hours after it was despatched and any notice sent by e-mail before 5 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the next Business Day.

### 4. THE CONTRACT

- 4.1. You agree to sell and We agree to purchase the Goods in accordance with the Contract. The Contract shall comprise (in order of precedence) any Purchase Order Amendments, the Purchase Order, these conditions of purchase and any other document (or part document) referred to on the Purchase Order. The Contract shall expressly exclude Your conditions of sale however these are purported by You to apply. Delivery of Goods in response to a Purchase Order or Order Amendment shall be taken by Us that You have accepted the terms and conditions of the Contract.

### 5. PRICE

- 5.1. You shall sell Us the Goods at the price stated in the Contract (the Price). If no Price is stated in the Contract then the Price shall be a fair price, taking into account prevailing market conditions. We shall have the right to conduct price benchmarking and in the event that We find a lower price for the same quality Goods You shall match such lower price. The Price shall include storage, packing, insurance, delivery, installation and commissioning (as applicable) but shall exclude VAT.

### 6. VARIATION OF REQUIREMENT

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- 6.1. You shall not alter any of the Goods except as directed by Us but We shall have the right from the execution of the Contract up to the date of despatch of the Goods, to direct You by written notice to add to or omit, or otherwise vary the Goods, and You shall carry out such variations and be bound by the same terms and conditions set out in the Contract so far as is applicable, as though the said variations were stated in the Contract.
- 6.2. In the event that any variation of the contractual requirement in accordance with clause 6.1 above would occasion an amendment to the Price, You shall within seven (7) Business Days of receipt of such notification, advise Us in writing of the impact on the Price and/or previously agreed Delivery Date. Any such proposed amendment shall be ascertained at the same level of pricing as that contained in Your tender or quote, as applicable. Any proposed change to the Delivery Date shall give the reasons for such change.
- 6.3. If in Your opinion any such variation in accordance with clause 6.1 above is likely to prevent You from fulfilling any of Your obligations under the Contract, You shall notify Us in writing immediately, whereupon We shall confirm to You within a maximum of ten (10) Business Days whether or not the said variations shall be carried out. Until We confirm such variation instructions in writing they shall be deemed not to have been given. Our view shall be final in deciding whether or not to proceed with a variation.

### 7. INTELLECTUAL PROPERTY

- 7.1. All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
  - 7.1.1. provided to You by Us shall remain Our property; and
  - 7.1.2. prepared by or for You specifically for the use, in relation to the performance of the Contract shall belong to Us subject to any exceptions set out in the Contract.
- 7.2. You shall obtain necessary approval before using any material, in relation to the performance of the Contract, which is or may be subject to any third party Intellectual Property Rights. You shall procure that the owner of the Intellectual Property Rights grant to Us a non-exclusive licence, or if You are the licensee of those rights, You shall grant to Us an authorised sub-licence to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-licence, transfer, and assign, and shall be granted at no cost to Us.
- 7.3. It is a condition of the Contract that the Goods will not infringe any Intellectual Property Rights of any third party and You shall during and after the Contract Period indemnify Us (and keep indemnified) against all Liabilities arising as a result of or in connection with any breach of this clause 7, except where any such claim relates to Our act or omission.
- 7.4. At the termination of the Contract, at Our request You shall immediately return to Us all materials, work or records held in relation to the Goods, including any back-up media.

### 8. CORPORATE REQUIREMENTS

- 8.1. You shall comply with all obligations under the Human Rights Act 1998 or any subsequent re-enactment.
- 8.2. You shall comply with all Our policies and rules, such as, but not limited to:
  - 8.2.1. Equality and diversity policies;
  - 8.2.2. Sustainability and Social Responsibility;

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- 8.2.3. Information security rules;
  - 8.2.4. Whistle-blowing and/or confidential reporting policies; and
  - 8.2.5. All site rules relevant to the fulfilment of Your obligations.
- 8.3. You shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 8.4. You shall comply with all relevant legislation relating to Your employees however employed including (but not limited to) the compliance in law of the ability of the employees to work in the United Kingdom.
- 8.5. If You become aware of any lapse relating to Your obligations under this clause 8, You shall provide Us with:
- 8.5.1. details of the finding; and
  - 8.5.2. the steps You have taken to remedy the situation.

### 9. PROPERTY AND RISK

- 9.1. You shall bear all risks of loss or damage to the Goods until they have been delivered in accordance with clause 10 and shall insure accordingly.
- 9.2. Ownership of the Goods shall pass to Us:
- 9.2.1. On Delivery of the Goods without prejudice to Our right of rejection under the Contract, or
  - 9.2.2. if We make any payment by instalment in accordance with the Contract, at the time such payment is made and You must immediately mark the Goods as Our property.

### 10. INDEMNITY AND INSURANCE

- 10.1. You shall indemnify and keep Us indemnified fully in respect of and in connection with:
- 10.1.1. all loss and/or expense during proper use of the Goods arising directly from defective materials, goods, workmanship or design supplied by You; and
  - 10.1.2. all loss and/or expense, and all actions, claims, demands, costs and expenses incurred by or made against Us which arises from any Installation and/or any services and/or advice given or anything done or omitted to be done under, or in connection with the Contract by You; and
  - 10.1.3. all and any actions, claims, demands or costs in respect of the death or injury to any person arising from defective materials, Goods, workmanship or design, or by reason of Your negligence, or any act or omission on the part of Your employees, sub-contractors, or agents in connection with the Contract; and
  - 10.1.4. any damage to Our property (including any materials, tools or patterns sent to You for any purpose).
- 10.2. You must take out and maintain insurance adequate to cover the risks set out in this clause 10 and Your liabilities under the Contract, including but not limited to product liability insurance, professional indemnity insurance and public liability insurance.
- 10.3. You shall take out and maintain such insurances as set out in this clause 10 with a reputable insurance company and at Our request provide evidence of the insurance policy or policies and

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of payment of the premiums. Your failure to maintain such insurances shall be treated as a material breach of the Contract and shall give Us the right to terminate the Contract in accordance with clause 30.

### 11. PROGRESS AND INSPECTION

- 11.1. You shall at Your expense provide any programmes of manufacture and delivery that We may reasonably require.
- 11.2. You shall notify Us, in writing, without delay if Your progress falls behind or may fall behind any of these programmes and the Delivery Date.
- 11.3. We shall have the right to check progress at Your works or the works of Your sub-contractors at all reasonable times, and to inspect and reject Goods that do not comply with the Contract. Your sub-contracts shall reserve such rights for Us.
- 11.4. Any inspection or approval shall not relieve You from Your obligations under this Contract.

### 12. DELIVERY

- 12.1. The Goods shall be delivered in accordance with any Delivery Instructions. If no time for Delivery is stated in the Delivery Instructions Goods shall be delivered between 9 a.m. and 5 p.m. on a Business Day.
- 12.2. Time for Delivery of the Goods shall be of the essence.
- 12.3. Where the Goods are delivered by You, the point of Delivery shall be when they are removed from the transporting vehicle and delivered in accordance with the Delivery Instructions. Where the Goods are collected by Us from You, the point of Delivery shall be when they are loaded onto Our vehicle.
- 12.4. Except where otherwise provided in the Contract, Delivery shall include the uploading or stacking of the Goods by You at such places We may direct in the Contract.
- 12.5. The issue by Us of a notice of receipt for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods.
- 12.6. All Goods must be properly packaged to survive transit without damage, clearly and legibly labelled and addressed. We shall not be liable to pay for any pallets, packages or containers in which the Goods are supplied. All packaging must be clearly marked to show to whom it belongs. Any packaging that You require returning will be done so at Your cost and risk.
- 12.7. Where specified in the Contract, You shall be responsible for the removal and disposal of all packaging associated with the Goods in accordance with the law at Your own expense.
- 12.8. Unless expressly agreed to the contrary, We shall not be obliged to accept delivery by instalments. If We do not specify or agree to delivery by instalments, delivery of any one instalment not in accordance with the Delivery Instructions shall without prejudice to any other rights or remedies of Us, entitle Us to terminate the whole of any unfulfilled part of the Contract without further liability to You.
- 12.9. If You at any time become aware of any act or omission, or proposed act or omission by Us which prevents or hinders, or may prevent or hinder You from supplying the Goods in accordance with the Contract, You shall inform Us in writing.
- 12.10. We retain You for the supply of Goods on a non-exclusive basis unless stated otherwise in the Contract.

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12.11. Delivery shall be to the Premises, as set out in the Delivery Instructions.

### 13. ACCEPTANCE

- 13.1. We shall have the right to reject the Goods in whole or in part whether or not paid for in full or in part within a reasonable time of Delivery if they do not conform to the requirements of the Contract.
- 13.2. We shall not be deemed to have accepted any Goods until We have had reasonable time after Delivery to conduct a full and thorough inspection of the Goods. We shall conduct such an inspection within seven (7) Business Days of receiving the Goods and shall notify You in writing of our acceptance following inspection. The date of such notice shall be the Acceptance Date.
- 13.3. Notwithstanding clause 13.2 above, We shall retain the right to reject the Goods following the discovery of any latent defect not apparent on an initial inspection of the Goods.
- 13.4. It is agreed that We may exercise the right of rejection notwithstanding any provision contained in section 11 or section 15A or section 30 (subsections 2A and 2B) or section 35 of the Sale of Goods Act 1979.
- 13.5. We shall give You a reasonable opportunity to replace the Goods with new Goods that conform to the Contract, after which time, We shall be entitled to cancel the Contract and purchase the nearest equivalent Goods elsewhere. In the event of cancellation under this clause You shall promptly repay any monies paid under the Contract without any retention or offset whatsoever. Cancellation of the Contract under this clause shall not affect any other rights We may have.
- 13.6. You must collect all rejected Goods within a reasonable time of rejection or We shall return them to You at Your risk and expense.

### 14. LATE DELIVERIES

- 14.1. If the Goods or any part of them are not delivered by the time or times specified in the Contract then We may by written notice cancel any undelivered balance of the Goods. We may also return for full credit and at Your expense any Goods which in Our opinion cannot be used owing to this cancellation.

### 15. E PROCUREMENT

- 15.1. If requested by Us, You shall participate in the e-procurement system of Our choice. This shall be at no additional costs to Us providing that any ongoing costs do not exceed the costs of purchasing cards.
- 15.2. If requested by Us, You shall accept the use of corporate purchasing cards at no additional costs to Us.

### 16. PAYMENT

- 16.1. We shall pay the Price for the Goods to You.
- 16.2. You shall, unless otherwise instructed, submit a VAT invoice to Us no later than seven (7) Business Days after the end of each calendar month detailing the Goods provided during the calendar month, the amount payable and the Purchase Order number.
- 16.3. We shall use reasonable endeavours to make payment of any undisputed invoice no later than thirty (30) Business Days following the date of receipt of the invoice by Us.

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- 16.4. We reserve the right to withhold payment of the relevant part of the Price without payment of interest where You have either failed to deliver the Goods at all or delivered Goods which in Our reasonable opinion are unsatisfactory and any invoice relating to such Goods will not be paid unless or until the Goods have been delivered to Our satisfaction.
- 16.5. We shall be entitled, without notice, to set off any liability owed by Us to You against any liability You owe Us, and may for such purpose convert or exchange any sums owing to You into any currency or currencies in which Our obligations are payable under the Contract. Our rights under this clause 16 shall be without prejudice to any other rights or remedies available to Us under the Contract or otherwise.

### 17. CONSUMABLE SUPPLIES

- 17.1. We reserve the right to procure consumable supplies to be used on or with the Goods, and suitable for the Goods from You or such other source as We deem appropriate. Such procurement of consumables from a source other than You shall not invalidate Our rights under these terms of the Contract, and shall in no way affect the provisions in respect of warranty claims made in accordance with clause 27, nor Our rights under this clause 17 provided that the consumables utilised meet the minimum standards as published by You or the manufacturer, or where no published standards are available, the standards generally accepted as being appropriate to the consumable supplies for use on or with the Goods concerned.
- 17.2. In the event that You claim that the use of specific consumables is adversely affecting the standards of performance of the Goods and/or increasing the cost to You of meeting Your obligations to provide Warranty Services, it shall be for You to prove that the consumables do not meet the requisite minimum standards, and are affecting the Goods and/or increasing Your costs as applicable. If You shall prove that the consumables do not meet the requisite minimum standards We shall cease using the consumables concerned and procure alternative consumables which meet the standards required.

### 18. MAINTENANCE

- 18.1. If required by Us before the end of the Warranty Period You shall enter into a separate contract for the maintenance of the Goods.
- 18.2. If a maintenance contract commences before the end of the Warranty Period the maintenance charges during the Warranty Period shall reflect Your obligations under clause 27.

### 19. SPARES

- 19.1. Where appropriate to the Goods supplied in accordance with the Contract, You shall make available to Us or any nominated third party, all spares and replacement parts as We or Our nominated third party shall require with reasonable despatch and at reasonable prices.
- 19.2. You shall maintain a supply of such spares or replacement parts for a period of five (5) years from the Delivery Date or the Acceptance Date, whichever is the latest.
- 19.3. Such spares or replacement parts shall be required to be fully compatible with and maintain as a minimum the same levels of performance as the Goods originally supplied but need not be identical to those items.
- 19.4. If during the period set out in clause 19.2 You or Your sub-contractor intend to discontinue the manufacture of spares or replacement parts for the Goods You shall forthwith give notice to Us of such intention and advise Us of any third party source from which the spares or

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replacement parts will be available, or to which third party source You intend to provide drawings, patterns, specifications and other information.

19.5. If during the stipulated period set out in clause 19.2 You or Your sub-contractor either:

19.5.1. fails to make available to Us or any nominated third party with reasonable despatch, at reasonable prices all such spares or replacement parts as We or Our nominated third party shall require for the Goods; or

19.5.2. becomes subject to any of the provisions set out at clause 29;

You shall, so far as legally entitled to do so and if required by Us, as soon as practicable deliver to Us or Our nominated third party free of charge such drawings, patterns, specifications and other information as referred to in clause 19.4 and which We or Our nominated third party shall be entitled to retain for such time only as necessary for the exercise by Us of Our rights under clause 19.4, and which if You so require shall be returned by Us to You at Our cost and expense.

### 20. OPERATING MANUALS

20.1. You shall supply to Us all operating manuals and other documentation necessary for the satisfactory operation of the Goods, and in any event all documentation so required. If after the Acceptance Date the operating manuals and documentation require updating or replacing, You shall be responsible for notifying Us of the availability of such updates or replacements and shall supply them at reasonable cost upon receipt of Our written instructions. You shall provide the operating manuals and other documentation in the media format in which they are available at the appropriate time.

### 21. ATTACHMENT TO THE GOODS

21.1. We shall have the right to attach to, or install into or onto the Goods any goods (including but not limited to software) which We consider to be appropriate and necessary to enable the Goods to be utilised to the fullest extent as required by Us. If We attach or install goods then this shall not have the effect of degrading the performance of the Goods and shall not relieve You from meeting Your obligations to provide Warranty Services in accordance with clause 27 or replacement goods in accordance with clause 19 hereof provided that:

21.1.1. the goods attached or installed are not specified in any of Your and/or the manufacturer's published specifications as having the effect of degrading the standards of performance or invalidating Our rights under clause 27 and 19;

21.1.2. You have not otherwise notified Us in writing that the attachment or installation of specific goods will degrade the standards of performance or invalidate Our rights under clauses 27 and 19; and

21.1.3. The goods have been attached or installed in accordance with the published instructions of You.

21.2. In the event that the attachments and/or installation is made by Us and You can prove that such attachment or installation is adversely affecting the standard of performance of the Goods, or otherwise increasing the frequency of the provision of the Warranty Services then You shall be entitled to be reimbursed for any associated direct costs which You can demonstrate as being reasonably and necessarily incurred in providing Warranty Services or returning the Goods to the normal standards of performance in accordance with the Contract



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and as a direct result of the attachment or installation being made by Us (other than where such attachment or installation has been made with Your approval).

### 22. TRAINING

- 22.1. Where appropriate, the Price shall include the cost of instruction of Our personnel in the use of the Goods, such instructions shall be in accordance with the requirements of the Contract.

### 23. PUBLICITY

- 23.1. Unless expressly permitted in writing by Us, You shall not publish or permit to be published either alone or in conjunction with any other person any information, articles, photographs or other illustrations relating to or connected with this Agreement or Our work. This clause shall not preclude us from mutually agreeing to promotional or publicity initiatives.

### 24. WORK ON OUR PREMISES

- 24.1. If the Contract involves any works or services which You perform on Our premises then the following conditions shall apply:
- 24.1.1. You shall ensure that You and Your employees, Your sub-contractors and their employees and any other persons associated with You shall adhere in every respect to the obligations imposed upon You by current safety legislation;
  - 24.1.2. You shall ensure that You and Your employees, Your sub-contractors and their employees and any other person associated with You shall comply with any regulations that We may notify to You in writing;
  - 24.1.3. When required You and Your employees, Your sub-contractors and their employees shall comply with any security requirements imposed by Us, including a right to search when entering or leaving Our site(s) and shall comply with any alcohol and/or drug testing programme that may be in place from time to time; and
  - 24.1.4. You shall ensure all employees or sub-contractor staff will be clearly identifiable by wearing a uniform and/or name badge at all times.
- 24.2. You shall make no delivery of materials, plant or other things nor commence any work on Our premises without obtaining Our prior consent.
- 24.3. Access to Our premises shall not be exclusive to You and shall only extend to such access as is reasonably required for the performance of the Contract. You shall co-operate with others working at Our premises as We may reasonably require.
- 24.4. We shall have the power at any time during the progress of the Contract to order in writing:
- 24.4.1. the removal from Our premises of any materials which in Our opinion are either hazardous, noxious or not in accordance with the Contract; and
  - 24.4.2. the substitution of proper and suitable materials; or
  - 24.4.3. the removal and proper re-execution, notwithstanding any previous test or interim payment, any work or Goods which, in respect or material or workmanship, are not in Our opinion in accordance with the Contract.
- 24.5. On completion of the Contract You shall remove Your plant, equipment and unused materials and shall clear away from Our premises all waste materials arising out of the Contract and leave Our premises in a neat and tidy condition.

25. HAZARDOUS GOODS AND SAFETY

- 25.1. Where the Goods comprise or include substances hazardous to health, You shall supply to Us on or before delivery with all data necessary to allow Us to form a suitable and sufficient assessment of the attendant risks and of the steps which need to be taken in order to meet the requirements of all relevant statutory regulations.
- 25.2. You shall observe all legal requirements of the United Kingdom, European Union and relevant international agreements in relation to health, safety and environment, and in particular to the marking of hazardous goods, the provision of data sheets for hazardous materials and all provisions relating to food.

26. ARTICLES ON LOAN AND USE OF INFORMATION

- 26.1. All tools, materials, drawings, specifications and other equipment and data (the Articles) loaned by Us to You in connection with the Contract shall remain always Our property and be surrendered to Us upon demand in good and serviceable condition (fair wear and tear allowed) and are to be used by You solely for the purpose of completing the Contract. You agree that no copy of any of the Articles will be made without the consent in writing of Our Authorised Officer. Until You return all the Articles to Us they shall be at Your risk and insured by You at Your expense against the risk of loss, damage or theft. Any loss of or damage to such Articles shall be made good by You at Your expense. All scrap arising from the supply of such Articles must be disposed of at Our discretion and all proceeds of sales of such scrap must promptly be paid to Us.

27. WARRANTY

- 27.1. You warrant that the Goods will be:
  - 27.1.1. of satisfactory quality within the meaning of the Sale of Goods Act 1994 and fit for purpose as required by the specification or held out by You;
  - 27.1.2. new (unless otherwise specified on the Purchase Order) and free from defects in design, material and workmanship;
  - 27.1.3. provided in accordance with the Contract, correspond to the specification and any drawings, samples or descriptions provided by You;
  - 27.1.4. so formulated, designed, constructed, finished and packaged as to be safe and without risk to health;
  - 27.1.5. free from asbestos content unless specifically required under the Contract;
  - 27.1.6. comply with all current legislation; and
  - 27.1.7. be fit for any purpose made known to You expressly or by implication and in this respect We rely on Your skill and judgement.
- 27.2. You warrant that to the extent that associated services are performed by appropriately qualified, trained and experienced personnel they shall be performed with a high standard of skill, care and diligence and in accordance with Good Industry Practice.
- 27.3. Without prejudice to Our right to terminate under clause 30, if any of the Goods supplied are not in accordance with the Contract, We shall be entitled to:

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- 27.3.1. require You to repair the Goods or to supply replacement Goods in accordance with the Contract as soon as reasonably practicable and in any event within ten (10) Business Days of a request to do so; or
- 27.3.2. subject to clause 13, treat the Contract as discharged by Your breach and require repayment of a proportion of the Price which has been paid together with payment of any additional expenditure over and above the Price reasonably incurred by Us in obtaining replacement Goods.
- 27.4. You further warrant that You will make good at Your expense any defect in the Goods that arises during the first twelve months of actual use or 18 months from the Acceptance Date, whichever period shall expire first. Such defects may arise due to Your faulty design, Your erroneous instructions as to the use or inadequate or faulty materials, poor workmanship or any other breach of Your obligations whether in the Contract or at law.

### 28. ASSIGNMENT AND SUB-CONTRACTING

- 28.1. The Contract shall not be assigned by You nor sub-contracted as a whole. You shall not sub-contract any part of the Contract without Our written consent, such consent shall not be unreasonably refused. The restriction contained in this clause shall not apply to sub-contracts for materials, minor details or for any part of which the makers are named in the Contract. You shall be responsible for all work done and Goods or Services supplied by all Your sub-contractors.

### 29. TERMINATION ON CHANGE OF CONTROL OR INSOLVENCY

- 29.1. We may terminate the Contract by written notice having immediate effect if:
  - 29.1.1. You undergo a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988, impacting adversely and materially on the performance of the Contract; or
  - 29.1.2. Where You are an individual or a firm, You or any partner in the firm becomes bankrupt or has a receiving order or administration order made against him, or makes any compromise or arrangement with or for the benefit of Your creditors, or appears unable to pay a debt within the meaning of Section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom; or
  - 29.1.3. Where You are a company, You pass a resolution or the Court makes an order that You be wound up (otherwise than for the purpose of solvent reconstruction or amalgamation), or a receiver, manager or administrator is appointed on behalf of a creditor in respect of Your business or any part of it; or You are unable to pay Your debts within the meaning of Section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.
- 29.2. We may only exercise Our right under clause 29 within six (6) months after a change of control occurs and shall not be permitted to do so where We have agreed in advance to the change of control. You shall notify Us immediately when any change of control occurs.

### 30. TERMINATION FOR REASONS OTHER THAN CHANGE OF CONTROL OR INSOLVENCY

- 30.1. We may terminate the Contract with immediate effect by notice in writing to You on or at any time if in addition to Our rights under clause 29:

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- 30.1.1. You are convicted of a criminal offence (other than a minor motoring offence); or
  - 30.1.2. You cease or threaten to cease to carry on Your business; or
  - 30.1.3. There is genuine belief that We will incur reputational damage as a result of the Contract continuing; or
  - 30.1.4. You are in breach of any of Your obligations under this Contract that is capable of remedy and which has not been remedied to Our complete satisfaction within ten (10) Business Days or such other reasonable period as may be specified by Us after issue of a written notice specifying the breach and requesting it to be remedied; or
  - 30.1.5. There is a material or substantial breach by You of any of Your obligations under the Contract which is incapable of remedy; or
  - 30.1.6. You commit persistent minor breaches of this Contract, whether remedied or not.
- 30.2. We reserve the right to terminate the Contract in part in the case of termination under Conditions 30.1.4, 30.1.5 and 30.1.6.
- 30.3. Notwithstanding the above, We reserve the right to terminate the Contract at will providing We have given You thirty (30) Business Days written notice of Our intention to terminate.

### 31. CONSEQUENCES OF TERMINATION

- 31.1. If this Contract is terminated in whole or in part We shall:
- 31.1.1. be liable to pay to You only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination;
  - 31.1.2. be entitled to deduct from any sum or sums which would have been due from Us to You under this Contract or any other Contract and to recover the same from You as a debt any sum in respect of any loss or damage to Us resulting from or arising out of termination of this Contract. Such loss or damage shall include the reasonable cost to Us of the time spent by Our officers in terminating the Contract and in making alternative arrangements for the supply of Goods or any part of them; and/or
  - 31.1.3. where termination arises under clause 30.1.7, We agree to pay to You any direct costs reasonably incurred by You due to early termination, subject to Our maximum liability provision in clause 32; and
  - 31.1.4. in the event that any sum of money owed by You to Us (Your debt) exceeds any sum of money owed by Us to You (Our debt) under the Contract then We shall, at Our sole discretion, be entitled to deduct Your debt from any of Our future debt or to recover Your debt as a civil debt.
- 31.2. Upon termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have been accrued prior to termination, neither party shall have any further obligation to the other under the Contract.

### 32. RIGHTS OF CANCELLATION

- 32.1. In addition to Our rights of termination under these terms, We may cancel the Purchase Order and any Purchase Order Amendment at any time by sending You written notice of termination. You shall comply with any such instructions that We may issue with regard to the Contract. If You submit a claim for compensation following termination (Termination Claim) then We shall consider such claim and shall pay You the cost of any commitments, liabilities or expenditure

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which in Our reasonable opinion are a direct consequence of the termination. You shall be required to mitigate any such losses and Our maximum liability under the Contract shall not exceed the Price stated in the Contract.

- 32.2. If You fail to submit a Termination Claim within thirty (30) Business Days of the date of Our notice of termination then We shall have no further liability under the Contract.

### 33. DISPUTE RESOLUTION

- 33.1. If any dispute or difference shall arise between the parties in connection with or arising out of the Contract then either party may give the other seven (7) Business Days' notice to resolve the dispute or difference through an Alternative Dispute Resolution (ADR) procedure as recommended by the Centre for Dispute Resolution. If the matter has not been resolved by an ADR procedure within fifty-six (56) Business Days of such notice having been received, or if the other party will not participate in the ADR procedure, then the dispute or difference shall be referred to Arbitration in accordance with clause 33.2 below.
- 33.2. If any dispute or difference which may arise between You and Us in connection with or arising out of the Contract is to be referred to ADR but is not so resolved as specified in clause 33.1 then either party shall give to the other ten (10) Business Days written notice to that effect and such dispute or difference shall be referred to a single Arbitrator agreed between the parties within ten (10) Business Days after the date of the said written notice or in default of agreement as may be nominated by the president for the time being of the Chartered Institute of Arbitrators

### 34. GOVERNING LAW

- 34.1. The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England.

### 35. ANTI-BRIBERY

- 35.1. You shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010 and promptly report to Us any request or demand for any undue financial or other advantage of any kind received by You in connection with the performance of the Contract.

### 36. THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

- 36.1. Nothing in the Contract is intended to confer on any person any right to enforce any term of this Contract which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999 or any statutory modification or re-enactment thereof.

### 37. WAIVER

- 37.1. A failure at any time to enforce any provision of the Contract shall in no way affect the right at a later date to require complete performance of the Contract, nor shall the waiver of the breach of any provision be taken or held to be a waiver of any subsequent breach of the provision or be a waiver of the provision itself.

### 38. SEVERENCE

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- 38.1. If any provision of these terms (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
- 38.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give effect to the commercial intention of the parties.

### 39. ENTIRE AGREEMENT

- 39.1. The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.