

## R&B SWITCHGEAR GROUP:

### STANDARD TERMS AND CONDITIONS OF SUPPLY OF GOODS AND SERVICES

#### 1. Definitions and interpretation

- 1.1 In these standard terms and conditions of supply ("**Conditions**"), unless the context clearly indicates another intention, the expressions detailed below will have the meanings attributed to them. Other less frequently used expressions are defined in the body of the Conditions:

"**Affiliate**" means, in relation to a Party, any person Controlling, Controlled by or under common Control with that Party;

"**BEAMA**" means the British Electrotechnical and Allied Manufacturers Association;

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for non-automated general business in London;

"**Contract**" means the agreement between the Supplier and the Customer for the sale and purchase of the Goods and/or Services incorporating these Conditions, the Purchase Order and Order Acceptance;

"**Control**" means the beneficial ownership of more than fifty percent (50%) of the issued share capital or the legal power to direct or cause the direction of the general management and policies of the party in question whether such control be by rights of ownership, voting to nominate directors or officers, or otherwise, and "**Controlling**" and "**Controlled**" shall be interpreted accordingly;

"**Customer**" means the Party that has agreed to purchase the Goods and/or Services from the Supplier as detailed in the Order Acceptance;

"**Deliverables**" means the deliverables set out in the Order Acceptance provided by the Supplier to the Customer;

"**Delivery**" means completion of delivery of the Goods in accordance with Clause 5.1 and "**Deliver**", "**Delivered**" and "**Delivering**" shall be construed accordingly;

"**Delivery Location**" means the location detailed in the Order Acceptance;

"**Force Majeure Event**" means any event or circumstance (not in existence on the date of the Contract) beyond the reasonable control of either Party;

"**Goods**" means the goods (or any part of them) to be supplied by the Supplier to the Customer in accordance with the Contract as detailed in the Order Acceptance;

"**Goods Specification**" any specification for the Goods including any relevant plans or drawings supplied by the Customer and agreed in writing by the Customer and the Supplier;

"**Incoterms**" means the latest edition of the ICC's Incoterms® Rules, as amended and updated from time to time;

**"Insolvency Event"** in relation to either Party means:

- (i) an application is made for a moratorium under the Insolvency Act 1986;
- (ii) any step being taken towards winding up, dissolution or striking off, and/or the appointment of a liquidator (otherwise than in furtherance of any scheme for solvent amalgamation or solvent reconstruction) or administrator, receiver, receiver and manager, administrative receiver, or, in each case, a similar officer;
- (iii) an administrator, liquidator, receiver, receiver and manager or administrative receiver being appointed;
- (iv) any step being taken towards the making of a bankruptcy order in the case of an individual;
- (v) if it becomes unable to pay its debts as they fall due, or its liabilities outweigh its assets, taking into account actual, contingent and prospective liabilities;
- (vi) any encumbrance over or affecting any material part of its assets or undertaking being enforced;
- (vii) any composition in satisfaction of, or moratorium in respect of, its debts or any scheme of arrangement or compromise between it and a creditor or its creditors or any class of its creditors being put in place; or
- (viii) any event or circumstance analogous to any of those listed above in any jurisdiction;

**"Intellectual Property Rights"** means patents, inventions, trade marks, service marks, domain names, business names, get up and trade dress and designs; copyright and related rights (including copyright in software and computer algorithms); database rights; know how and trade secrets; and all other intellectual and industrial property rights which subsist or will subsist now or in the future in any part of the world, whether registered or not or capable of registration or not, including: all applications for and the right to apply for, claim priority and be granted any such rights; any renewals, extensions or restorations, and divisional, continuation and reissued applications of any such rights;

**"Legal Requirements"** means all laws, regulations, rules, guidelines, codes of conduct, judgements and other measures and decisions of any Relevant Authority from time to time in force (whether or not legally binding) (including, the BS EN IEC 61439-1:2021 (as amended));

**"Order Acceptance"** has the meaning given in Clause 2.7;

**"Purchase Order"** means the written instructions from the Customer to purchase the Goods and/or Services;

**"Quotation"** means the written quotation from the Supplier to the Customer which sets out proposed Goods and/or Services;

**"Relevant Authority"** means any international, national or local governmental or regulatory body, authority, agency, court or tribunal, in any part of the world;

**"Services"** means the services including the Deliverables, supplied by the Supplier to the Customer as set out in the Order Acceptance;

"**Service Delivery Location**" means the location detailed in the Order Acceptance;

"**Service Period**" means the performance period of the Services in accordance with Clause 10.2.;

"**Supplier**" means R&B Switchgear Services Ltd, a company registered in England and Wales with company number 02628220 and whose registered office is at Switchgear House The Courtyard, Green Lane, Heywood, Lancashire OL10 2EX;

"**Tax**" means all forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, deductions, withholdings or liabilities wherever chargeable and whether of the UK or any other jurisdiction;

"**Third Parties Act**" means the Contracts (Rights of Third Parties) Act 1999; and

"**VAT**" means value added tax chargeable under the Value Added Tax Act 1994 (and any tax of a similar nature which is introduced in substitution for such value added tax) at the rate in force when the relevant supply is made.

1.2 In these Conditions, unless the context otherwise requires, any reference to:

- (a) any legislation is a reference to that legislation and any subordinate legislation made under it as amended, extended or re-enacted from time to time;
- (b) Clauses are to clauses of these Conditions;
- (c) the singular includes the plural and vice versa, and any reference to one gender includes the other genders;
- (d) a "**person**" includes any individual, any government, state or agency of a state, any legal person and any trust, partnership, association or unincorporated body (whether or not having legal personality);
- (e) a "**Party**" means a party to the Contract;
- (f) any agreement or document is to such agreement or document as varied, supplemented, restated, renewed, novated or replaced from time to time;
- (g) "**written**" or "**in writing**" means the representation of words, in English and capable of being read with the naked eye, on paper or in similar hard copy form or in an electronic form which enables the recipient to retain a copy;
- (h) a number of days will be reckoned exclusively of the first day and inclusively of the last day unless the last day falls on a day which is not a Business Day in which case the last day will be the next succeeding day which is a Business Day;
- (i) a time of day is to London time;
- (j) a "**day**" is reference to a period of twenty four (24) consecutive hours;
- (k) a "**month**" is a reference to a period starting on one day in a calendar month and ending on the day before the numerically corresponding day in the next calendar month or, if there is no such day, on the last day of that month, save that, where any such period

would otherwise end on a day which is not a Business Day, it shall end on the preceding Business Day;

- (l) an "**encumbrance**" includes a mortgage, charge, debenture, pledge, lien, assignment by way of security, hypothecation, security interest, equity, right to acquire, option, right of pre-emption, title retention or any other security agreement or arrangement or other encumbrance of any kind and any agreement or arrangement to create any encumbrance; and
- (m) the words "**include**", "**includes**", "**including**", "**in particular**" and "**such as**" are to be construed as if they were immediately followed by the words "without limitation".

1.3 The headings in these Conditions are for convenience only and do not affect its interpretation.

## **2. Basis of contract**

2.1 These Conditions apply to and form part of the Contract and supersede any previously issued terms and conditions of purchase or supply. No other terms or conditions that the Customer may seek to impose or incorporate by any means, or which are implied by law, trade custom, practice or course of dealing, shall form part of the Contract. For the avoidance of doubt, any terms and conditions of the Customer diverging from the Conditions shall not be valid even if the Supplier effected Delivery or rendered Services without reservation.

2.2 If there is an inconsistency between any of the provisions of these Conditions and the Order Acceptance, the provisions of the Order Acceptance shall prevail.

2.3 By placing a Purchase Order with the Supplier, the Customer is deemed to accept these Conditions. If the Order Acceptance stipulates that the Goods are purchased on any trade term defined in Incoterms, the obligations of the seller and the buyer as set out in such trade term shall be incorporated into these Conditions and shall apply to the Supplier and Customer respectively. In the event of a conflict between such trade term and the Conditions, the trade term shall prevail.

2.4 Subject to Clause 2.5, no variation of these Conditions or the Contract shall be effective unless expressly agreed in the Order Acceptance and duly executed by each Party by its authorised representative and the Supplier shall not be deemed to waive any of these Conditions by failing to object to provisions contained in any notification or other communication from the Customer.

2.5 The Supplier may vary these Conditions, as a result of new applicable Legal Requirements or a change in the Supplier's operational conduct, provided that the Customer is notified in advance of any such variation.

2.6 Each Purchase Order submitted by the Customer constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Purchase Order are complete and accurate.

2.7 The Supplier may accept or reject a Purchase Order at its discretion. A Purchase Order shall not be accepted or deemed accepted, and no binding obligation to supply any Goods or provide any Services shall arise, until the Supplier issues a written acceptance of the Purchase Order (an "**Order Acceptance**"), at which point the Contract shall come into existence and the Order Acceptance cannot be cancelled without the prior written consent of the Supplier.

- 2.8 If the Supplier is unable to accept a Purchase Order, it shall notify the Customer as soon as reasonably practicable.
- 2.9 Rejection by the Supplier of a Purchase Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.10 In terms of the Goods, the quantity and description of the Goods (including the code or product numbers of the Goods, where applicable) shall be as set out in the Order Acceptance. The date and number of the relevant Order Acceptance, all relevant Customer and/or Supplier reference numbers, any special storage instructions and estimated date for the installation services to be provided in respect of the Goods, if applicable, and, if the Goods are being delivered by instalments, the quantity of instalment of Goods remaining to be delivered.
- 2.11 In terms of the Services, the price, description, Deliverables and duration of the Services shall be set out in the Order Acceptance.
- 2.12 Any drawings, designs, specifications or descriptions (other than those set out in the Order Acceptance), samples or marketing or other promotional materials relating to the Goods are illustrative only and do not form part of the Contract and the Supplier has the right to vary all or any of them at its discretion.
- 2.13 Any quotation for the Goods and/or Services given by the Supplier shall not constitute an offer and shall only be valid for a period of twenty one (21) Business Days from its date of issue.

### **3. Financial standing**

- 3.1 An Order Acceptance shall be subject to the Supplier being satisfied as to the Customer's credit rating.

### **4. Goods**

- 4.1 The Goods are described in the Quotation and/or Goods Specification.
- 4.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Goods Specification. This Clause 4.2 shall survive termination of this Contract.
- 4.3 The Supplier reserves the right to amend the Goods Specification if required by any Legal Requirement and the Supplier shall notify the Customer in any such event.

### **5. Delivery**

- 5.1 Unless otherwise stated on the Order Acceptance, the Goods shall be Delivered Ex-Works Incoterms (with the place of collection by the Customer being the Delivery Location). The Supplier shall arrange for the Goods to be available for collection at the Delivery Location and the Customer will be responsible for the loading of the Goods and for any further onward

transportation (unless agreed otherwise by the Supplier in writing). The Supplier shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

- 5.2 The Customer shall be responsible for ensuring that the Goods comply with all Legal Requirements applicable in the country of destination and, if different, the territory in which the Goods are used.
- 5.3 The quantity of any consignment of Goods as recorded by the Supplier upon despatch from the Supplier shall be conclusive evidence of the quantity Delivered unless the Customer can produce conclusive evidence to the contrary. The Customer shall not be entitled to reject a Delivery of the Goods on the basis that an incorrect volume of the Goods has been supplied except where the volume Delivered exceeds five percent (5%) more or less than the quantity specified in the Order Acceptance provided that the Supplier shall only invoice the Customer, and the Customer shall only be obliged to pay, for the quantity actually Delivered.
- 5.4 The Supplier may Deliver the Goods in instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. References in these Conditions to Order Acceptance shall, where applicable, be read as references to instalments and any delay in Delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.5 Unless otherwise agreed in writing by both Parties, all packaging materials shall remain the Customer's property and are to be returned to the Customer at the Customer's expense. The Customer shall make them [available for collection by the Supplier] OR [deliver them to the Supplier at its own expense] in sufficient time prior to the estimated delivery date of the Goods.
- 5.6 Following Order Acceptance, all delivery dates in respect of the Goods will be communicated by the Supplier to the Customer separately in writing and are approximate only, and the time of delivery is not of the essence. Any delay in Delivery shall not entitle the Customer to refuse to accept or otherwise reject the Goods. Further, no such delay in Delivery or failure to Deliver shall entitle the Customer to withhold any payment due to the Supplier in respect of the Goods or any goods that the Supplier has supplied or agreed to supply to the Customer.
- 5.7 The Supplier shall notify the Customer as soon as reasonably practicable on becoming aware that a delay in delivery is likely (and will provide a revised estimate, if possible).
- 5.8 The Supplier shall have no liability for any failure to Deliver, or delay in Delivery of, the Goods to the extent that such failure or delay is caused by a Force Majeure Event or by the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.9 Subject to Clause 5.11, if the Supplier is delayed in or prevented from Delivering the Goods (or any part of them) by reason of any act or omission on the part of the Customer, its agents or employees, then the Supplier shall store and insure such Goods pending Delivery. The Supplier shall be entitled to charge the Customer for all related insurance costs and storage costs and expenses.
- 5.10 The Customer shall use its best endeavours to collect the Goods promptly on Delivery. Subject to Clause 5.11, if the Customer fails to collect the Goods (or any part of them) on the date of Delivery for any reason, then the Supplier shall store and insure such Goods pending collection. The Supplier shall be entitled to invoice the Customer for the Goods and to charge the Customer for all related insurance costs and storage costs and expenses, except where the Customer has failed

to collect the Goods by reason of a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract.

- 5.11 The Supplier may resell or otherwise dispose of all or part of any Goods being stored pursuant to Clause 5.9 or 5.10 without any obligation or liability to the Customer if (as applicable): (a) the Customer has failed to collect such Goods within thirty (30) days after Delivery of the Goods was notified to the Customer, except: (i) where such failure is caused a Force Majeure Event (ii) or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods; or (iii) if the Supplier and the Customer have agreed to and entered into a temporary storage agreement; or (b) the Customer has failed to accept the Goods on the delivery date communicated by the Supplier to the Customer, except that the Supplier, in both cases, shall: (A) deduct all insurance charges, storage costs and expenses, and costs of resale; and (B) account to the Customer for any excess of the resale price over, or invoice the Customer for any shortfall of the resale price below, the price paid by the Customer for the Goods.

## 6. Warranty

- 6.1 The Supplier warrants that the Goods shall at the time of Delivery and for a period of twelve (12) months after the date of Delivery (the "**Warranty Period**"):

- (a) correspond in all material respects with the description and any specification set out in the Order Acceptance;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier and;
- (c) be free from material defects in design, material and workmanship.

- 6.2 Subject to Clause 6.6, if:

- (a) during the Warranty Period the Customer gives notice to the Supplier:
  - (i) in the case of a defect that is apparent on normal visual inspection, within seven (7) Business Days of Delivery; and
  - (ii) in the case of a latent defect, within a reasonable time of the latent defect having become apparent

that some or all of the Goods do not comply with the warranty set out in Clause 6.1;

- (b) the Supplier is given a reasonable opportunity after receiving such notice of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) promptly returns such Goods to the Supplier's place of business at the Supplier's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. The Customer acknowledges and agrees that in order to obtain a remedy pursuant to this Clause, all Goods returned by the Supplier must be returned in their original packaging and with all their original components.

- 6.3 A claim by the Customer in respect of alleged faulty Goods shall not be a ground for withholding any payment due to the Supplier.

- 6.4 If the Customer fails to give notice in accordance with Clause 6, it shall be deemed to have accepted the relevant Goods.
- 6.5 The Customer shall have no right to return any Goods to the Supplier except as set out in Clause 6.2, Clause 6.4 or with the prior written consent of, and upon terms agreed by, the Supplier. The Supplier will not be liable for any carriage charges in respect of the return of Goods unless the Supplier has given its prior written consent for their return and confirmed in writing that it accepts liability for those carriage charges.
- 6.6 The Supplier shall not be liable for failure of the Goods to comply with the warranty set out in Clause 6.1 in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with Clause 6.2(a);
  - (b) the failure arises because the Customer failed to follow the Supplier's oral or written instructions for the storage, handling or preparation, commissioning, installation, use and/or maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (c) the Customer alters or repairs such Goods without the written consent of the Supplier, or, having received such consent, not in accordance with the Supplier's instructions;
  - (d) the failure arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (e) the Goods differ from the description and any specification set out in the Order Acceptance as a result of changes made to ensure they comply with applicable Legal Requirements.
- 6.7 Except as provided in this Clause 6, the Supplier gives no warranties and makes no representations in relation to the Goods, and shall have no liability for their failure to comply with the warranty set out in Clause 6.1. All warranties and conditions, whether express or implied by statute, common law or otherwise (including the conditions implied by sections 13–15 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 6.8 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier in accordance with Clause 6.2.
- 6.9 The Supplier's reasonable decision as to whether the Goods comply with the description and any specification set out in the Order Acceptance shall be final.
- 7. Performance, inspection and test**
- 7.1 Any data, technical information or performance results provided by the Supplier is based on tests performed by the Supplier under standard conditions at the Delivery Location (the "**Results**"). The Results are deemed to be accurate by the Supplier but the Supplier does not warrant the accuracy of the Results if the same tests are performed under different conditions in a different location.
- 7.2 The Goods will be inspected and, where practicable, submitted for testing by the Supplier before Delivery. In the event that the Customer requests testing of the Goods before Delivery, the Customer will be responsible for the full cost incurred by the Supplier in performing the testing.



If the Customer wishes to be present for the testing of the Goods, the Supplier shall give the Customer seven (7) Business Days written notification prior to the date of testing ("**Testing Date**"). If the Customer is absent on the Testing Date, the testing will be performed by the Supplier and the results will be sent to the Customer.

**8. Title and risk**

- 8.1 Risk in the Goods shall pass to the Customer immediately on Delivery.
- 8.2 Subject to Clause 8.5, title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for all sums due or outstanding (including interest) to the Supplier for (a) the Goods and (b) any and all other goods that the Supplier has supplied or agreed to supply to the Customer.
- 8.3 The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership has not passed from the Supplier.
- 8.4 Until title to Goods have passed to the Customer, the Customer shall:
- (a) hold the Goods as the Supplier's fiduciary agent and bailee; and
  - (b) store or otherwise keep the Goods at all times in such a way as clearly to indicate they are owned by the Supplier and shall not remove, deface, obscure or delete any mark placed by the Supplier on the Goods or their packaging; and
  - (c) maintain the Goods in the condition in which they were Delivered and from the date of Delivery keep them insured on the Supplier's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Supplier. The Customer shall obtain an endorsement of the Supplier's interest in the Goods on its insurance policy, subject to the insurer being willing to make the endorsement. On request, the Customer shall allow the Supplier to inspect the Goods and the insurance policy; and
  - (d) give the Supplier promptly such information as the Supplier may reasonably require from time to time relating to the Goods and any adverse material changes to its ongoing financial position; and
  - (e) notify the Supplier immediately it (i) becomes subject to any Insolvency Event; or (ii) has concerns regarding its ability to meet its ongoing financial commitments; or (iii) starts to consider any form of corporate restructure; or (iv) becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract.
- 8.5 Notwithstanding Clause 8.4 and subject to Clause 8.6, the Customer has the right before the Supplier receives payment for the Goods to use them in the ordinary course of its business (but not otherwise) as fiduciary bailee of Supplier.
- 8.6 The Customer's right to possession of any Goods for which payment has not been made to the Supplier and its rights under Clause 8.5 to use them in the ordinary course of its business shall terminate immediately:
- (a) the Customer fails to make any payment to the Supplier on the due date; or
  - (b) on receipt by the Customer of a Termination Notice; or

- (c) the Customer undergoes an Insolvency Event; or
- (d) on notice that the Supplier has reasonable doubts as to the solvency of the Customer.

8.7 Subject to Clause 8.6, at any time before title to the Goods passes to the Customer, the Supplier shall be entitled to require the Customer immediately to deliver up all the Goods in its possession that have not been irrevocably incorporated into another product. If the Customer fails to do so promptly, the Supplier shall be entitled (either directly or through its representatives and/or agents) to enter any premises where the Goods are or may be stored in order to recover them (and the Customer hereby grants the Supplier, its representatives and agents an irrevocable licence to do so).

8.8 The Supplier has the right to resell any Goods repossessed under Clause 8.7. If the proceeds of resale exceed the amount of the Customer's indebtedness to the Supplier, however arising, the Supplier shall account to the Customer for such surplus.

## 9. Product recall

9.1 The Supplier may issue a notice to recall or withdraw some or all of the Goods from the market ("**Recall Notice**") if: (i) the supply or use of the relevant Goods infringes, or may infringe, a third party's intellectual property rights; (ii) the relevant Good is, or may be, unsafe; (iii) the relevant Good is, may be, or may become illegal or non-compliant with any applicable Legal Requirement; (iv) a defect in the relevant Good may cause harm to the Supplier's reputation or brand as determined by the Supplier; or (v) for any other reasonable ground.

9.2 The Customer shall: (i) comply with any Recall Notice; and (ii) give such assistance as the Supplier reasonably requires to recall or withdraw the relevant Goods, and comply with the Supplier's instructions about the process of implementing that recall or withdrawal.

## 10. Supply of Services

10.1 The Supplier shall supply the Services to the Customer in the Service Period in accordance with the Order Acceptance in all material respects.

10.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services and Deliverables within the Service Period as communicated by the Supplier to the Customer following the Order Acceptance, but any dates shall be estimates only and may need to be extended depending on the Deliverables, in which case Supplier shall notify the Customer of the revised dates and time shall not be of the essence for the performance of the Services.

10.3 The Supplier reserves the right to amend the Order Acceptance in respect of the Services if necessary to comply with any Legal Requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

10.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## 11. Customer's Obligations

11.1 The Customer shall:

- (a) ensure that the terms of the Order Acceptance are complete and accurate in respect of the description of the Goods and/or Services;

- (b) co-operate with the Supplier in all matters relating to the Goods and/or Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to deliver the Goods and/or provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the installation of the Goods and/or the supply of the Services (as applicable);
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Goods to be delivered and/or installed and the Services to be provided before the relevant dates (unless the relevant licences, permissions and consents are the responsibility of the Supplier pursuant to applicable Legal Requirements);
- (g) keep all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (h) comply with any additional obligations as set out in the Order Acceptance.

11.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Clause 11.6; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 12. Price and payment

12.1 Subject to Clause 12.3, the price of the Goods and the charges for the Services shall be the price and/or charges as set out in the Supplier's published price list in force as at the date of the Order Acceptance. If no charges in respect of the Services are specified, the charge payable shall be based on the Supplier's hourly rates. The same shall apply in the event that the parties agree the provision of additional services which are out of scope of the Services set out in the Order Acceptance.

- 12.2 Unless agreed in the overall price of the Services, the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 12.3 The Supplier may, by giving notice to the Customer at any time after Delivery to , increase the price of the Goods and/or Services previously communicated to the Customer by using the BEAMA contract price adjustment clause and formula to reflect any increase in the cost of the Goods and/or Services to the Supplier that is due to:
- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, currency regulation, increases in and/or the imposition of new taxes and duties, and increases in labour including salaries, materials and other manufacturing costs as per the BEAMA contract price adjustment clause);
  - (b) any request by the Customer to change the scope of the Goods and/or Services; or
  - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions or have the Customer's premises ready for the provision of the Services.

Any price increase will not take effect until seven (7) Business Days after the date that the price increase has been notified to the Customer.

- 12.4 The price of the Goods and/or Services is exclusive of VAT, which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, on receipt of a valid VAT invoice.

### **13. Terms of payment**

- 13.1 In respect of Goods, the Supplier shall be entitled to invoice the Customer for the Goods on or at any time after the issue of the Order Acceptance in accordance with the invoicing schedule set out in the Order Acceptance. In respect of Services, the Supplier shall invoice the Customer on completion of the Services . Each invoice shall quote the reference on the relevant Order Acceptance.
- 13.2 The Customer shall pay invoices in the pounds sterling, in full and in cleared funds within thirty (30) days of receipt. The time for payment shall be of the essence and all payments shall be made by direct debit or bank transfer, or by such other payment method as shall be stipulated by the Supplier from time to time, to such bank account as Supplier may from time to time notify to the Customer.
- 13.3 If the Customer disputes any invoices due to be paid by the Customer, the Supplier must be notified by the Customer within fourteen (14) Business Days in writing.
- 13.4 In the event that the Customer's payment of an invoice results in an overpayment to the Supplier, the Supplier will issue a credit note and the Customer will be reimbursed by the Supplier within thirty (30) Business Days to the Customer's nominated bank account.
- 13.5 All amounts due under the Contract from the Customer to the Supplier shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of Tax as required by any applicable Legal Requirements).

13.6 Interest at an annual rate equal to four per cent (4%) above the base rate of the Bank of England from time to time will accrue on any sum due under the Contract which is not paid by the due date. Such interest shall be calculated on a daily basis until the date of actual payment (whether before or after judgment) and be compounded quarterly.

13.7 The Supplier may attribute any monies received by it from the Customer to any debt owed by the Customer to the Supplier whether under these Conditions or otherwise, regardless of what the Customer purports to designate the payment to be on account of. Further, the Supplier shall be entitled but not obliged at any time or times to set-off any liability of the Customer to it against any liability it has to the Customer (in either case however arising and whether any such liability is present or future, liquidated or unliquidated, and irrespective of the currency of its denomination) and may for such purpose convert either liability at a market rate of exchange for the purpose of set off. If any liability is unliquidated or unascertained, the Supplier may set off an amount estimated by it in good faith to be the amount of that liability.

13.8 .

#### **14. Insurance**

14.1 The Supplier has obtained the following insurance policies:

- (a) Employers Liability insurance- £15,000,000
- (b) Public & Products Liability- £30,000,000
- (c) Professional Indemnity- £10,000,000

The Customer is responsible for making its own arrangements for the insurance of any excess liability. The Customer shall also maintain in place contracts of insurance with reputable insurers to cover its obligations under the Contract.

14.2 Each Party shall provide the other Party a copy of the relevant insurance policies and proof of payment of the current premiums on written request

#### **15. Compliance with laws and policies**

The Customer shall comply with all applicable Legal Requirements, and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract and in relation to the use and/or resale of the Goods.

#### **16. Intellectual Property Rights**

16.1 The Customer acknowledges that all Intellectual Property Rights in connection with the Goods and/or Services and the goodwill connected with them (including the Goods Specification) (the "**Supplier's Intellectual Property Rights**") belong solely to the Supplier and nothing in the Contract is intended to pass ownership of the Supplier's Intellectual Property Rights to the Customer.

16.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence to copy the Deliverables (excluding any materials provided by the Customer and incorporated in the Deliverables) for the purpose of receiving and using the Services and operating the Goods.

- 16.3 The Supplier gives no warranty, either express or implied, with respect to the validity of the Supplier's Intellectual Property Rights or that the Supplier's Intellectual Property Rights will not infringe the rights of any third party.
- 16.4 Nothing in the Contract shall be construed as conferring any licence or granting any rights in favour of the Customer in relation to the Supplier's Intellectual Property Rights, and the Customer undertakes not to make any direct or indirect use of Supplier's Intellectual Property Rights, otherwise than in accordance with the terms of the Contract. The Supplier asserts its full rights to control the use of any trade marks affixed or applied to or incorporated within the Goods (the "**Marks**") within the EEA and the Customer shall assist the Supplier as required in preventing parallel importers from diluting the Supplier's rights in the Marks.
- 16.5 The Customer acknowledges and accepts that, otherwise than in accordance with the terms of the Contract, it shall not without the Supplier's prior written consent:
- (a) alter or make any addition to the labelling or packaging of the Goods displaying the Marks;
  - (b) make any addition or modifications to the Goods; or
  - (c) alter, deface or remove any reference to the Marks, any reference to Supplier or any other name attached or affixed to the Goods or labelling; or
  - (d) use in relation to the Goods any marks other than the Marks.
- 16.6 The Customer will under no circumstances seek, apply for, obtain or try to obtain registration of any trade or service mark or trade name the same or similar to the Marks or any part of them or colourable imitations of them or of any other trade mark or trade name which the Supplier or any Affiliate of the Supplier owns or claims rights in anywhere in the world.
- 16.7 The Customer undertakes not to do or omit to do or authorise any third party to do or omit to do anything that:
- (a) could prejudice or damage Supplier's goodwill in the Marks, the Goods or Supplier's reputation; or
  - (b) is likely to bring the Marks or the Goods into disrepute or affect the validity of the Marks or the validity of any other of the Supplier's Intellectual Property Rights.
- 16.8 The Customer shall promptly and fully notify the Supplier if it becomes aware of any actual, threatened or suspected infringement in the country of destination of the Marks or any other of the Supplier's Intellectual Property Rights.
- 16.9 This Clause shall survive termination of the Contract.
- 17. [Data Protection]**
- 17.1 The Supplier will comply with applicable data protection laws in respect of any personal data it receives from Customer in accordance with its data protection policy.

## 18. Liability and Limitation of Liability

18.1 References to liability in this Clause 18 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), breach of statutory duty or otherwise.

18.2 Nothing in the Contract shall limit or exclude the liability of either Party for:

- (a) death or personal injury caused by its negligence, or the negligence of its representatives, agents or subcontractors (as applicable);
  - (b) the indemnity given by the Customer under clause 4.2;
  - (c) fraud or fraudulent misrepresentation or wilful default;
  - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
  - (e) defective products under the Consumer Protection Act 1987; and
- any other matter in respect of which it would be unlawful to exclude or restrict liability

18.3 Nothing in this Clause 18 shall limit the Customer's payment obligations under the Contract.

18.4 Subject to Clause 18.2, neither Party shall under any circumstances whatever be liable to the other for:

- (a) any loss of profit, revenue, or anticipated savings; or
- (b) loss of or damage to goodwill, reputation or opportunity; or
- (c) any loss that is an indirect or secondary consequence of any act or omission of the Party in question

arising out of or in connection with the Contract or any breach or non-performance of it no matter how fundamental (including by reason of negligence) and even if that Party is advised in advance of the possibility of any such losses or damages.

18.5 Without prejudice to Clauses 18.2 and 18.4, the total liability of the Supplier to the Customer shall not exceed the total price of the Goods and/or Services under the Contract to which the relevant claim relates.

18.6 The Customer acknowledges and agrees that the allocation of risk contained in these Conditions is reflected in the price of the Goods payable by the Customer under the Contract and is reasonable in all the circumstances, having regard to all relevant factors including the ability of the Supplier to rely on its own insurance arrangements and other resources to bear or recover any loss or damage incurred for which Supplier is not liable.

18.7 Where the Goods or any part of them are supplied, designed or manufactured by a third party on the Supplier's behalf, the Supplier's obligations to the Customer shall not exceed those owed to the Supplier by the relevant third party.

18.8 This Clause shall survive termination of the Contract.

## 19. Termination and Suspension

19.1 Unless terminated earlier in accordance with the termination provisions, the Contract will continue in full force and effect until the latest of:

- (a) the conclusion of the provisions of the Goods and/or Services in accordance with any Acceptance Order; or
- (b) the conclusion of payment of all sums due under the Contract.

19.2 The Supplier may terminate the Contract with immediate effect by giving notice to the Customer in accordance with Clause 22.1 at any time on or after the occurrence of any of the following events:

- (a) the Customer fails to pay any undisputed amount due under the Contract on the due date for payment and remains in default not less than fourteen (14) days after the Supplier has given notice requiring it to make such payment; or
- (b) the Customer fails to comply in any respect with Clause 15 or otherwise commits a material breach (or multiple breaches which are material in aggregate) of the Contract (other than an obligation to pay) and, if such breach is capable of remedy, fails to remedy it within fourteen (14) Business Days of the Supplier giving a notice to it specifying the breach and requiring it to be remedied (or, having so remedied the breach, commits a similar breach within the next seven (7) Business Days); or
- (c) any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled;
- (d) the Customer challenges or disputes the validity or ownership of any of the Supplier' Intellectual Property Rights; or
- (e) the Customer undergoes an Insolvency Event or ceases, or threatens to cease, to carry on all or a substantial part of its business; or
- (f) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy; or
- (g) there is a change of Control of the Customer.

19.3 For the purposes of Clause 19.2, a breach shall be considered capable of remedy if the Customer can comply with the provision in question in all respects other than as to the time of performance, provided that time of performance is not of the essence.

19.4 The Supplier may, immediately and without notice, stop delivery of the Goods and/or suspend the supply of Services under the Contract at any time on or after:

- (a) the Supplier reasonably believes that the Customer is about to undergo an Insolvency Event or cease to carry on all or a substantial part of its business; or
- (b) if the Customer fails to pay any amounts due under the Contract on the due date for payment.



## **20. Consequences of Termination**

- 20.1 The termination or expiry of the Contract shall be without prejudice to any rights or liabilities of either Party accrued at the date of termination, or which may accrue after termination in respect of any act or omission prior to termination (including any act or omission giving rise to termination).
- 20.2 On termination or expiry of the Contract, any provision of the Contract that expressly intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 20.3 On termination or expiry of the Contract:
- (a) all licences and rights granted to the Customer under the Contract will automatically terminate and the Customer's right to possession of any Goods for which payment has not been made to the Supplier shall terminate immediately;
  - (b) the Customer shall immediately pay all monies due to the Supplier under the Contract, together with all invoices issued by the Supplier which remain unpaid; and
  - (c) the Supplier shall submit an invoice in respect of any Goods Delivered and/or any Services supplied but for which no invoice has already been issued, and the Customer shall pay such invoice immediately on receipt.
- 20.4 The provisions of this Clause shall survive the termination of the Contract.

## **21. Force Majeure**

- 21.1 Neither Party shall liable be to the other Party for any delay or failure in the performance of any of its obligations under the Contract, to the extent that its performance is prevented, hindered or delayed by a Force Majeure Event, provided that it gives notice to the other Party as soon as reasonably practicable of the Force Majeure Event and the effect on its ability to perform its obligations under the Contract.
- 21.2 Where Clause 21.1 applies, the time for performance of the obligations affected shall be extended for as long as is made necessary by the Force Majeure Event. The time for performance of the corresponding obligations of the other Party shall be extended to the same extent.
- 21.3 If a Force Majeure Event continues for a period in excess of thirty (30) days, either Party shall have the right (without prejudice to Clause 19) to terminate the Contract immediately on giving notice to the other Party in accordance with Clause 22.1.

## **22. Notices**

- 22.1 Except as otherwise specifically provided, notice under or other communication pursuant to these Conditions must be in writing and will only be effective if:
- (a) sent by hand or courier of international repute, to the address (and marked for the attention) of the relevant recipient set out in the Order Acceptance; or
  - (b) sent by email to the email address of the relevant recipient set out in the Order Acceptance; or

- (c) sent as described in paragraphs (a) or (b) above or to such other address as may be notified from time to time (in accordance with this Clause), any such change taking effect on the later of the date, if any, specified in such notice as its effective date or the date five (5) Business Days after receipt of such notice.
- 22.2 Subject to Clause 22.3, a notice under or other communication pursuant to the Contract shall be treated for the purposes of the Contract as having been received by the recipient:
- (a) if sent by hand or courier of international repute, when left at the recipient's address or an attempt has been made to leave the notice at the recipient's address but delivery has been refused by the recipient or one of their representatives; and
  - (b) if sent by email, one hour after it was sent provided the sender proves that it was sent to the correct address and no notice of delivery failure or bounce back has been received.
- 22.3 Any notice under or other communication pursuant to the Contract which is received on a day which is not a Local Business Day, or after 5pm (local time at the place of receipt) on any day, will be treated as having been given at 9am on the next Local Business Day (and for this purpose "**Local Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for non-automated general business at the place of receipt).
- 22.4 This Clause does not apply to the service of any document in any legal action or proceedings or, where applicable, any arbitration or other method of dispute resolution arising out of or in connection with the Contract.

### **23. Entire Agreement**

- 23.1 The Contract constitutes the entire agreement between the Parties relating to its subject matter and supersedes any and all previous agreements (whether written or oral) between the Parties relating to that subject matter.
- 23.2 Each Party agrees that no representation has been made (innocently or negligently) by or on behalf of any other Party (or relied on by it) in relation to the subject matter of the Contract.
- 23.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement expressly set out in the Contract.
- 23.4 Nothing in this Clause 23, however, shall limit or reduce any liability of any person except to the extent permitted by law.

### **24. Severance**

- 24.1 If any provision of the Contract is or becomes void or unenforceable this shall not affect the validity or enforceability of any other provision of the Contract.
- 24.2 If any such provision would be valid and enforceable if some part of such provision were deleted, such provision shall apply with such deletion as may be necessary to make it valid and enforceable.

## **25. Assignment**

- 25.1 The Customer may not without the prior written consent of the Supplier assign, novate, transfer, charge, hold on trust or deal in any other manner with all or any of its rights under the Contract nor sub-contract or delegate in any other manner the performance of all or any of its obligations under the Contract.
- 25.2 The Supplier may at any time, without the Customer's approval, assign all or any of its rights under the Contract and or sub-contract the performance of all or any of its obligations under the Contract and shall notify the Customer thereof within a reasonable time thereafter.

## **26. Waiver and Remedies**

- 26.1 Subject as otherwise expressly provided in the Contract, the rights and remedies of the Parties under the Contract are cumulative and not exclusive of any rights and remedies provided by law, and all such rights and remedies may be enforced separately or concurrently with any other right or remedy.
- 26.2 No failure to exercise or delay in exercising any right or remedy shall constitute a waiver of that right or remedy. No single or partial exercise of any right or remedy, and no waiver of any right or remedy, shall prevent or restrict the further exercise of that or any other right or remedy. Any waiver shall apply only in favour of the person to whom it is expressly addressed and for the specific circumstances for which it is given. Any waiver of any right or remedy shall be effective only if it is made in writing, expressly states that it is a waiver of the relevant right or remedy and is duly executed by or on behalf of the relevant Party by an authorised representative.

## **27. Further assurance**

Each Party shall at its own expense (and shall use all reasonable endeavours to procure that any necessary third party shall) promptly take such action, and execute and deliver such documents, as the other Party may reasonably require to give full effect Contract.

## **28. No Partnership or Joint Venture.**

Nothing in the Contract shall give rise to any partnership or agency between the Parties and neither Party shall have, nor shall represent that it has, any authority to make any commitments on behalf of the other Party.

## **29. Third party rights**

- 29.1 Save as expressly provided in Clause 29.2 below a person who is not a Party has no right under the Third Parties Act to enforce or avail itself of any term of the Contract.
- 29.2 Any Affiliate of the Supplier shall be entitled under Third Parties Rights Act to enforce and/or avail itself of any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.
- 29.3 No Affiliate of the Supplier may (i) assign, transfer, charge, hold on trust or deal in any other manner with its right to enforce any term of the Contract under the Third Parties Act, or (ii) bring proceedings to enforce any term the Contract under the Third Parties Act without the prior consent of the Supplier and without having given notice to both Parties that it agrees to be bound by Clause 30.

**30. Governing law and jurisdiction**

- 30.1 The Contract and any non-contractual obligation arising out of or in connection with it are governed by the law of England and Wales.
- 30.2 Each Party irrevocably agrees that the courts of England and Wales have exclusive jurisdiction to settle any dispute arising out of or in connection with the Contract or any non-contractual obligation arising out of or in connection with it.
- 30.3 Nothing in this Clause shall limit the right of either Party to seek injunctive or other interlocutory relief in any jurisdiction at any time.