

## Definitions

In these General Conditions, the following words and expressions shall, unless the context or circumstances require otherwise, have the meanings assigned to them below.

**"Agreement"** means the agreement between the Purchaser and the Supplier for the supply of the Goods and/or Services, consisting of these general terms and conditions, the Special Condition, the Purchase Order and any appendices thereto;

**"CDM Regulations"** means the Construction (Design and Management) Regulations- 2015 as amended or replaced from time to time.

**"Charges"** means the fees, expenses and charges set out in the Purchase Order as the amounts payable by the Purchaser to the Supplier for the Goods and/or Services ;

**"CIS" or "Construction Industry Scheme"** means the scheme described in the Income Tax (Construction Industry Scheme) Regulations 2005 as amended or replaced from time to time.

**"Construction Act"** means the Housing Grants, Construction and Regeneration Act 1996 as amended by Part 8 of the Local Democracy Economic Development and Construction Act 2009 and any subsequent amendment.

**"Construction Contract"** shall have the meaning given to it in the Construction Act.

**"Commencement Date"** means the date of the Purchase Order;

**"Confidential Information"** means secret or confidential commercial, financial, marketing, technical or other information know-how, trade secrets and other information in any form or medium whether disclosed orally or in writing before or after the date of the Agreement, together with any reproductions of such information in any form or medium or any part(s) of this information ;

**"Control"** shall mean the ability to exercise or be entitled to acquire, direct or indirect control over the affairs of the company concerned including the possession of or the entitlement to acquire over 50% of the issued share capital of the company or the voting power in the company;

**"Delivery Date"** means the date and time specified in the Purchase Order upon which any Goods are scheduled to be delivered to the address specified in the Purchase Order and/or upon which the Services are to be completed by the Supplier ;

**"Force Majeure"** means Act of God, fire, flood, lightning, war, revolution, act of terrorism, riot or civil commotion but excluding strikes, lock-outs or other industrial action (whether of the affected party's own employees or others), failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services;

**"Goods"** means the articles, materials and/or hardware which are to be supplied to the Purchaser pursuant to the Agreement;

**"Incoterms 201.0"** means the official rules for the interpretation of trade terms entering into force on 1 January 2011 as issued by the International Chamber of Commerce.

**"Intellectual Property Rights"** means without limitation any patent, copyright, database right, moral right, design right, registered design, trade mark, service mark, domain name, know-how, utility model, unregistered design or, where relevant, any application for any such right, or other industrial or intellectual property right or rights of the same or similar effect or nature subsisting anywhere in the world;

**"Purchaser"** means Linbrooke Services Limited a company registered in England and Wales (No 04487275) whose registered office is at Unit 3, Sheffield Business Park, and Churchill Way, Sheffield S35 3PY

**"Purchase Order"** means the orders for the Goods and/or Services placed by the Purchaser. The Purchase Order shall be deemed to include any subsequent releases and updates or revisions thereof;

**"Services"** means the services which are to be supplied to the Purchaser pursuant to the Agreement;

**"Special Conditions"** means any special terms and conditions set out on the Purchase Order.

**"Specification"** means the design, performance, functionality and procedures of the Goods and/or Services to be provided by the Supplier pursuant to the Agreement;

**"Supplier"** means the person to whom the Purchase Order is issued.

**"Term"** means where a term is specified in the Purchase Order that term or where no term is specified in the Purchase Order the period during which the provisions of the Agreement are impliedly intended to remain in force;

**"Variations"** means any changes, additions or omissions to the Goods or Services as set out in Clause 9

**1.2** In the Agreement references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same;

## **Scope, Commencement and Duration**

This Agreement shall come into force on acceptance of the Purchase Order by the Supplier with effect from the Commencement Date and (subject to Clause 20) shall terminate automatically on the expiry of the Term.

Unless expressly stated in the Purchase Order and subject to these General Conditions the parties agree that the Purchaser is not committed to the procurement of any specific volume of Goods and/or Services from the Supplier, is not committed to issue any further Purchase Order(s) to the Supplier and the Supplier shall not be an exclusive supplier of the Goods and/or Services.

## **Order Procedure and Interface with Purchase Order**

The Agreement constitutes the whole contract between the Supplier and the Purchaser regarding the subject matter of the Purchase Order. If there is any conflict between the foregoing the following order of precedence shall apply:

The Purchase Order (excluding the General and the Special Conditions);

the Special Conditions ; and The General Conditions.

(The Special Conditions and these General Conditions being hereinafter collectively referred to as "the Conditions").

It is expressly agreed that any other conditions contained in any documentation issued by either party including any terms contained in any packaging shall not apply.

The Supplier shall provide written acceptance of any Purchase Order, within five (5) working days of receipt.

### **Supply of the Goods and/or Services**

The Supplier will supply the Goods and/or Services to the Purchaser in accordance with the terms of the Agreement.

Each party shall use its reasonable endeavours to identify all consents necessary for the fulfilment of its obligations under the Agreement and each party shall use its reasonable endeavours to obtain any such consent it requires.

Where the Supplier is providing Services on the Purchaser's premises or on a third party premises the Supplier shall comply with all applicable directions, rules, regulations and policies of the Purchaser and the third party.

The Supplier's delivery of the Goods and Services to the timescales prescribed in the Purchase Order take account of shutdown of the Supplier's premises whether scheduled or not. Holiday periods shall have been taken account of in the delivery of the Goods and Services.

### **Equipment Availability**

The Supplier will make available spare or replacement parts for the Goods for a period of ten years from the final Delivery Date. However, the Supplier may, from time to time phase out certain spare or replacement parts by agreement with the Purchaser. Under such circumstances the Supplier will provide at least twelve months' notice of its intention to discontinue supply or to provide such notice as is reasonable if such discontinuance is outside its control and will agree with the Purchaser a date for last order placement and supply of the parts affected on terms and prices to be agreed.

### **Delivery and Title**

The Supplier shall supply the Goods to the destination named in the Purchase Order, delivered duty paid in accordance with incoterms 2010. Delivery and/or completion of the Services shall take place on or before the Delivery Date.

If delivery and or completion does not take place by the Delivery Date, then the Supplier shall pay or allow to the Purchaser the cost arising due to that delivery and/or completion is delayed. To the extent that any damages, losses, costs, claims (including, without limitation, claims against the Purchaser for liquidated damages) the Purchaser shall be entitled to recover from the Supplier all damages, losses, costs, claims (including, without limitation, claims against the Purchaser for liquidated damages) and expenses resulting from late delivery and/or completion.

The Purchaser shall grant a reasonable extension to the Delivery Date if the Delivery Date is either delayed by a breach of this Agreement by the Purchaser or a Variation. This new date shall become the Delivery Date for the purposes of this Agreement.

If the Purchaser wishes the Supplier to substitute equivalent Goods and/or Services to the type ordered, then the Purchaser

shall have the right to request such substitution at any time prior to the Delivery Date.

Where the Purchaser receives Goods as unexamined, the Purchaser's right subsequently to inspect the Goods and reject them if they do not comply with the Specification shall not be prejudiced. The parties agree and acknowledge that a defect may not be identified until such time as the Goods have been installed and commissioned.

Legal title in the Goods and any associated documentation and/or legal title in any documentation or deliverables associated with the Services shall pass to the Purchaser free of encumbrances upon delivery or payment whichever occurs first.

Documentation supporting delivery of Goods shall be as provided for in the Special Conditions.

## **Quantity**

It is a condition of the Agreement that the Supplier delivers the exact quantity of Goods specified in the Purchase Order. Any increase in quantity will only be authorised by a further written order.

If the Supplier delivers a quantity less than the quantity specified in the Purchase Order, the Purchaser may elect to:

refuse to take delivery of or reject the Goods and the Purchaser shall have no liability for any payment ; or

take delivery of and keep the lesser quantity of Goods or any part thereof and pay for them at the rate specified in the Purchase Order, in which event the Supplier shall indemnify the Purchaser against all costs, losses, damages and expenses suffered or incurred by the Purchaser as a result of or in connection with the delivery of such lesser quantity of Goods.

If, notwithstanding clause 7.1, the Supplier delivers a quantity greater than the quantity specified in the Purchase Order, the Purchaser may elect to:

accept and pay for all the Goods delivered at the rate specified in the Purchase Order; or

Accept and pay for the quantity specified in the Purchase Order and reject the excess Goods.

## **Risk**

Risk in the Goods shall pass upon delivery unless they are being installed and/or commissioned by the Supplier in such case risk shall pass upon completion of the installation and/or commissioning.

If any part of the Goods or Services suffers loss or damage whilst the Supplier has responsibility for the care thereof, the same shall be made good by the Supplier at his own expense. The Supplier shall also at his own expense make good any loss or damage to the Goods or Services occasioned by him in the course of operations carried out by him for the purpose of completing any outstanding work or of complying with his obligations under Clause 13.2.

## **9 Variation**

**9.1** The Supplier shall not make any Variations without the prior written consent of the Purchaser.

If any such direction is likely to prevent the Supplier from fulfilling any of its obligations under the Agreement, the Supplier shall within five working days from the receipt of the Purchaser's direction so notify the Purchaser giving full details of the amendments required to the Supplier's obligations. If the Supplier fails to notify the Purchaser then the Supplier shall forfeit any right to modification of any of its obligations or any extension of time under the Agreement by reason of or in connection with the Purchaser's direction.

In any event, within five days of receipt of the Purchaser's direction the Supplier shall advise the Purchaser in writing of its estimate of the amount of any adjustment to the Charges. Any such adjustment to the Charges shall be ascertained and determined by reference to the rates and prices in the Agreement insofar as applicable and shall be subject to the provision by the Supplier of acceptable supporting documentation. To the extent that the adjustment is not ascertainable by reference to the rates and prices in the Agreement any adjustment to the Charges shall be determined on a fair and reasonable basis and shall be subject to the provision by the Supplier of acceptable supporting documentation. Nonetheless the Parties are free to agree any adjustment to the Charges before the Variation is implemented

The Supplier shall not carry out any Variation until notified in writing by the Purchaser to proceed. Such instruction to proceed may be given at any time whether before or after any required changes to the Supplier's obligations or to the Charges have been agreed.

Variations shall be confirmed by amendment to the Purchase Order or issue of a replacement Purchase Order, signed by or on behalf of the Purchaser and issued to the Supplier.

## **Charges and Payment**

In consideration of the provision of the Goods and/or Services by the Supplier to the Purchaser, the Purchaser shall pay the Charges to the Supplier. The Supplier will issue a VAT invoice if applicable.

Unless stated otherwise in the Special Conditions or Purchase Order, the Supplier may only invoice for Goods once they have all been delivered complete and free from defects and for the Services once they have all been completed free from defects.

The Supplier shall ensure that all invoices shall bear the relevant Purchase Order number and shall be submitted for payment to the address stated in the Purchase Order and enclose such substantiation of the sums contained therein as the Purchaser may reasonably require.

Unless otherwise expressly provided in the Special Conditions or Purchase Order or agreed by the parties in writing, all invoices submitted by the Supplier shall be paid by the Purchaser 30 days from date of invoice.

If any sums are due to the Purchaser from the Supplier, then the Purchaser shall be entitled to set-off such sums against any payments due to the Supplier from the Purchaser under or in relation to this Agreement or any other contract.

Where this Agreement is a Construction Contract the Purchaser may no later than 2 days before the final date for payment give notice which shall specify any amount proposed to be withheld or deducted from the amount due and the ground or grounds for such withholding or deduction and the amount of the withholding or deduction attributable to each ground.

Failure by the Purchaser to make any payment by the due date shall entitle the Supplier to simple interest at 2% over the Base Rate of the Bank of England which is current at the date the payment became due.

No payment made by the Purchaser shall in any way be construed as acceptance of any of the Goods or Services supplied by the Supplier or any of its sub-contractors and no payment shall in any way impair or restrict any rights or remedies the

Purchaser may have under the Agreement or otherwise for and in connection with the supply of the Goods and/or Services under the Agreement by the Supplier or any of its subcontractors.

The Supplier agrees that for the purposes of the Agreement the Purchaser is a "Most Favoured Customer" of the Supplier meaning that the Supplier shall ensure that at no time while the Agreement binds the Supplier will the Charges exceed the charges levied by the Supplier for the same or equivalent Goods and/or Services offered to any other customers of the Supplier for comparable levels of business on comparable terms and conditions. The Purchaser shall be reimbursed for any overpayments made as a consequence of the Supplier's failure to adjust the Charges due consequent upon the Purchaser's "Most Favoured Customer" status.

## **Performance Failure**

If the Supplier has failed to supply the Goods and/or Services (or any part thereof) due to a breach of the Supplier's obligations in the Agreement, the Purchaser shall be entitled (without prejudice to any other rights or remedies it may have):

### **at its option:**

to require the Supplier to remedy such breach by re-supplying the relevant Goods and/or Services free of charge and if the Supplier fails to do so within a reasonable time the Purchaser may arrange for any outstanding Goods and/or Services to be supplied by a third party and all costs in relation thereto shall be deducted from the Charges ; or

to require the Supplier to repay or credit to the Purchaser that part of the Charges paid by the Purchaser to the Supplier relating to the provision of the relevant Goods and/or Services ; and

Suspend payment of the Charges until such time as the Supplier recommences the provision of the Goods and/or Services in accordance with the Agreement.

## **Indemnities**

The Supplier agrees to indemnify the Purchaser, its employees, agents and sub-contractors against:-

all losses, costs, damages, expenses and claims (including, without limitation, such losses, costs, damages and claims associated with, de-installing, reinstalling, reinstating, redelivering, decommissioning and recommissioning the Goods or Services) caused to and made against the Purchaser which would not have been caused or made had the Supplier fulfilled its express or implied obligations or warranties under this Agreement ;

any claims for infringement of any Intellectual Property Rights or for unpaid royalties by reason of the use or sale of the Goods and/or Services supplied (save where such claims arise solely as a result of the infringing Goods having been manufactured in accordance with specifications or designs supplied solely by the Supplier) and against all losses, costs, damages, expenses and claims which the Purchaser may incur or have to bear or for which the Purchaser may become liable as a result of such claims for infringement;

all losses, costs, damages, expenses and claims made against the Purchaser arising out of the negligent acts and omissions of the Supplier, its employees, agents or its sub-contractors.

all claims and proceedings, losses, damages, costs and expenses arising or incurred in respect of:

death or personal injury of any persons howsoever caused and whether or not caused by or through the fault or negligence

of the Supplier to the extent such damage or loss results from the acts or omissions of the Supplier, its employees, agents or its sub-contractors; or

loss of or damage to any property howsoever caused and whether or not caused by or through the fault or negligence of the Supplier to the extent such damage or loss results from the acts or omissions of the Supplier, its employees, agents or its sub-contractors save to the extent that such damage or loss was caused by the Purchaser's negligence

## **Warranties**

The Supplier warrants that:

the Goods and/or Services shall conform to the Specification and any other requirements made known by the Purchaser to the Supplier or to be reasonably inferred from the circumstances of the Agreement; and

the Goods shall be free of defects in design, materials and workmanship, shall be fit for their intended purpose (which is made known to the Supplier or which can be reasonably inferred from all the circumstances of the Agreement) and be of satisfactory quality ;

the Services shall be carried out in accordance with good industry practice and with the degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of business as the Supplier under the same or similar circumstances ; and

the Goods and/or Services shall comply with

all applicable law, relevant legislation, regulations, codes of practice, guidance notes and other requirements of any relevant government or governmental agency and to the extent that compliance with any of the foregoing is advisable but not mandatory, the minimum compliance to be achieved by the Supplier should be the best practice in the relevant industry; and

the health, safety and security standards of the Purchaser; and

any reasonable instructions and guidelines issued by the Purchaser from time to time.

Without prejudice to any of the Purchaser's other rights and remedies under this Agreement or at law, the Supplier will repair or at the Purchaser's request replace any defective Goods free of charge for twenty-four (24) months commencing from the date of delivery and will re- perform any defective Services free of charge for twenty -four (24) months commencing from the date on which the last of the Services were complete. The repair or replaced Goods and re-performed Services shall then benefit from the unexpired portion of their 24 month warranty period or a new 12 month warranty (whichever is the longer). The Supplier will investigate defective Goods or Services and will provide the Purchaser with a written report describing the cause or causes of such defects and setting out details of corrective action which will prevent recurrence. The Supplier shall keep the Purchaser indemnified in respect of all claims, proceedings, costs, damage, losses and/or expenses which result during proper use directly or indirectly in whole or in part from defective materials, goods, workmanship or design in the Goods or Services supplied by the Supplier.

The Supplier will inform the Purchaser promptly, giving details of the circumstances, reasons and likely duration, in the event it becomes aware of anything of whatsoever nature and whether or not the result of any act or omission on the part of the Supplier or their Personnel or sub-contractors which may prevent the Supplier fulfilling its obligations in accordance with the Agreement;

The Purchaser shall upon giving reasonable notice have the right from time to time during the Term at its own cost to conduct an audit of the Supplier's operations and facilities and its quality, environmental and health and safety procedures and systems

The Supplier warrants that any software supplied or utilised for or in connection with the supply of Goods or Services under the Agreement shall be free from viruses, Trojans and worms or any other code which produces or causes an effect other than a legitimate user of the relevant software would desire or intend.

### **Insurance Policies**

The Supplier shall maintain in force at its own cost such insurance policies as are appropriate and adequate having regard to its obligations and liabilities under the Agreement and shall upon request supply to the Purchaser a copy of the current insurance certificates in relation thereto .

### **Limitation of Liability**

The liability of the Purchaser under this Agreement, in tort or otherwise shall be limited to the amount agreed for the supply of the Goods and Services as specified in the relevant Purchase Order.

It is agreed that nothing in this Agreement or in law shall make the Purchaser liable in any circumstances for any :

economic loss whether direct or indirect

loss of use, profits, business, revenues or contracts incurred by the Supplier

special, punitive or exemplary damages  
Consequential or indirect loss or damage.

Any limitation of liability set out in the Agreement shall not apply so as to restrict either party's liability for death or personal injury resulting from either party's or that party's employees, agents or sub-contractors negligence or fraud.

### **The parties hereby acknowledge and agree:**

that the limitations and exclusions of liability set out in this Agreement are fair and reasonable for the purposes of the Unfair Contract Terms Act 1977;

each party's obligations under the Agreement are fair and reasonable .

### **Intellectual Property Rights**

All Intellectual Property Rights, inventions , know how, new technology, improvements and all similar matters made, designed or developed by the Supplier in connection with the Agreement shall be the sole property of the Purchaser and the Supplier shall procure at no charge to the Purchaser the execution of any and all papers necessary to perfect ownership by the Purchaser.

All Intellectual Property Rights, material, drawings, designs, specifications and other technical data prepared by the Purchaser in connection with the Agreement shall be and shall at all times remain the property of the Purchaser who shall be entitled to reproduce and use all such data at any time for any purpose whatsoever. The Supplier shall not use any such data except



in connection with the Agreement.

If software is developed specifically for the Purchaser, all Intellectual Property Rights created by the Supplier in connection with the software shall be the sole property of the Purchaser and the Supplier shall procure at no charge to the Purchaser the execution of any and all papers necessary to perfect ownership by the Purchaser.

If the software is not developed specifically for the Purchaser :

the Supplier hereby grants to the Purchaser a non-exclusive license (with right to sub-license) to use the software and any modification thereto ;

the Supplier shall at no charge send to the Purchaser one hard copy and one machine-readable copy in reproducible format of all modifications to the software and supporting documentation, including any upgrade, update or new release of the software made during Term accompanied by an updated listing of document numbers with relevant revision dates; and

the Purchaser has the right to integrate and reproduce the software and supporting documentation into the Purchaser's network, own software or documentation (or that of any customer of the Purchaser)

## **Confidentiality**

The Supplier shall keep and procure to be kept secret and confidential all Confidential Information belonging to the Purchaser disclosed or obtained as a result of the relationship of the parties under the Agreement and shall not use nor disclose the same save for the purposes of the proper performance of the Agreement or with the prior written consent of the Purchaser. Where disclosure is made to any employee, consultant, sub-contractor or agent, it shall be done subject to obligations equivalent to those set out in the Agreement and the Supplier shall procure that any such employee, consultant, sub-contractor or agent complies with such obligations provided that the Supplier shall continue to be responsible to the Purchaser in respect of any disclosure or use of such Confidential Information by a person to whom disclosure is made.

The obligations of confidentiality in this Clause 17 shall not extend to any matter which the Supplier can show:

is in, or has become part of, the public domain in other than as a result of a breach of the obligations of confidentiality under the Agreement ; or

was independently developed by it prior to the Commencement Date as evidenced by its written records ; or

was independently disclosed to it without restriction of confidence by a third party entitled to disclose the same; or

is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.

## **Information and Reports**

The Supplier shall on request from the Purchaser supply the Purchaser from time to time with such information and reports as the Purchaser reasonably requires in relation to the performance of the Supplier's obligations under the Agreement.

## **Force Majeure**

If either party is affected by Force Majeure it shall immediately notify the other party in writing of the matters constituting

the Force Majeure and shall keep that party fully informed of their continuance and of any relevant change of circumstances whilst such Force Majeure continues.

If in either party's reasonable opinion an event of Force Majeure results in disruption of the provision or receipt of the Goods and/or Services and such disruption continues for more than 90 days, then the party not prevented from performing its obligations may terminate the Agreement forthwith on written notice to the other.

## Termination

The Purchaser may immediately terminate the Agreement (or any part of it) and/or cancel all or any of the Goods or Services ordered under a Purchase Order without payment of compensation or other damages caused to the Supplier by such termination other than as specified in clause 21.1 by giving notice in writing to the Supplier if any one or more of the following events happens:

the Supplier commits a material breach of any of its obligations under the Agreement which is incapable of remedy;

the Supplier fails to remedy, where it is capable of remedy, or persists in any material breach of any of its obligations under the Agreement (save as to payment) after having been required in writing to remedy or, at the Purchaser's option desist from such material breach within a period of 7 days;

the Supplier undergoes a change of Control;

if the Supplier purports to assign all of its obligations under the Agreement without the prior written consent of the Purchaser;

if the Supplier ceases to carry on business.

The Purchaser may immediately terminate the Agreement (or any part of it) and/or cancel any or all of the Goods or Services ordered under a Purchase Order without payment of compensation or other damages to the Supplier other than as specified in clause 21.1 if any one or more of the following events happen:

the Supplier enters into any form of insolvency, bankruptcy, administration, administrative receivership, receivership, winding up, creditor's arrangement compromise or composition (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction) as envisaged by the Insolvency Acts 1986 and 2000 or the Enterprise Act 2002; or

the Supplier suffers or undergoes any procedure analogous to any of those specified in (a) above or any other procedure available in the country in which the Supplier is constituted, established or domiciled against or to an insolvent debtor or available to the creditors of such a debtor.

Without prejudice to any other rights or remedies pursuant to the terms of the Agreement the Purchaser may terminate the Agreement and/or cancel any or all of the Goods or Services ordered under a Purchase Order (or any part of it) at any time prior to delivery upon giving the Supplier not less than 14 days' notice in writing.

The termination of the Agreement (or any part of it) and/or cancellation of all or any of the Goods or Services ordered under a Purchase Order shall be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.

Any expiry or termination of the Agreement (or any part of it) (for whatever reason) shall not affect the coming into force or the continuance in force of any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

## **Consequences of Termination**

On the expiry or termination of the Agreement (or any part of it) (for whatever reason) the following provisions shall apply

the Supplier shall promptly return to the Purchaser or dispose of in accordance with the Purchaser's instructions all Confidential Information and other data and documents (including the Purchaser's customers' details) and copies thereof disclosed or supplied to the Supplier pursuant to or in relation to the Agreement and if requested shall certify in writing to the Purchaser when the same has been completed;

if the Purchaser terminates the Agreement for any of the reasons specified in Clauses 20.1 or 20.2, the Purchaser shall at its option be entitled to claim for all claims, proceedings, damages, costs and expenses incurred by it arising out of the termination including, without limitation, any additional costs of and expenses incurred in connection with continuing the provision of the Goods and/or Services and/or to correct any work already undertaken and/or the repair or replacement of any Goods delivered; in all cases and without limitation to include all de-commissioning, de-installing, re-installing and re-commissioning costs.

The Supplier hereby agrees that notwithstanding anything contained elsewhere in the Agreement to the contrary, whether expressly or by implication the Supplier's sole remedy in the event of termination pursuant to clauses 20.1, 20.2 and 20.3 is to receive payment from the Purchaser of:

Subject to Clause 21.3 such part of the Charges as represents the value of the Goods and/or Services (if any) completed, delivered and accepted in accordance with the Agreement prior to the date of receipt of such termination notice, less any monies previously received under the Agreement less any claims by the Purchaser in accordance with clause 21.1 (b);

in respect of termination under Clause 20.3 only, any direct costs and expenses reasonably and necessarily incurred by the Supplier in complying with any instructions from the Purchaser to cease work as substantiated to and agreed by the Purchaser; or

in lieu of (i) and (ii) such sum as the Purchaser and the Supplier may agree as full and final settlement.

All materials and work of whatever nature and in whatever medium including, without limitation, software, artwork, negatives, proofs, computer discs database compilations, creative materials, documents or any other original item produced by the Supplier in pursuance of the Agreement shall vest in and become the absolute property of the Purchaser from the time they are produced. The Supplier shall when requested by the Purchaser deliver any such items immediately to the Purchaser.

In respect of termination under Clauses 20.1 and 20.2 only, the Purchaser may at its option return any Goods delivered as at the date of termination and the Supplier will immediately refund all amounts paid for such Goods.

## **Assignment and Sub-Contracting**

This Agreement is personal to the Supplier. The Supplier shall not assign, delegate, sub- contract (save to the extent any sub-contracting is of a minor or inconsequential nature), transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Agreement, nor appoint any sub-distributor or sub-agent without the prior written consent of the Purchaser. Such consent shall not relieve the Supplier from any liability or obligation under the Agreement.

The Purchaser may novate, assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Agreement at any time without the prior written consent of the Supplier.

## **Documentation and Integration**

The Supplier shall in a timely manner supply the Purchaser at no charge all instruction, installation guides, user guides, health and safety and maintenance manuals and handover information including all software documentation in relation to the Goods/Services together with any other information or documents necessary to meet the specification and as are reasonably required by the Purchaser.

The Supplier shall provide the Purchaser at the earliest opportunity all relevant information and documentation including all updates, revisions and changes thereto to enable the Purchaser or third party to maintain and / or repair and Goods supplied. Such information shall include: an overview and explanation of the documentation scheme including a master index to all documentation; and, all manuals including systems, technical configuration, reliability, planning, installation, user operating and repair; and, all functional, timing, logic and circuit diagrams and associated descriptions and diagram notes; and, all drawings, material and components lists together with the sources approved by the purchaser and specification references; and, all printed wiring board and component layouts; and, full functional and test specifications for each complete system and circuit board; and, details of test equipment including associated hardware and software required for the repair of the Goods: and, all software structure information including source code listings: and, any specialist test equipment and tools and their full specification and sources.

Information and documentation shall be provided by the Supplier in one hard copy and one machine-readable copy in reproducible format unless otherwise agreed. The Purchaser may make copies of the same at no charge.

The Supplier shall promptly inform the Purchaser of any shortcomings in the documentation supplied under this Agreement.

## **Health and Safety and Quality**

The attention of the Supplier is drawn to the obligations imposed by the Health and Safety at Work etc. Act 1974 on designers, manufacturers, importers, suppliers, erectors and installers of articles and substances for use at work to ensure, so far as is reasonably practicable, that such articles and substances are so designed, constructed or installed to be safe and without risks to health at all times when they are being set, used cleaned, maintained, handled processed, stored or transported.

Without prejudice to any obligation contained elsewhere in the Agreement, before delivery of the Goods to the Purchaser, the Supplier shall provide to the Purchaser information about the use for which such Goods have been designed and tested, and about any conditions necessary to ensure that when installed, commissioned and put to use the Goods will be safe and without risks to health.

Where in the performance of the Supplier's obligations under this Agreement the Supplier, its sub-contractors, tradesmen or artisans intend either to supply to the Purchaser, or to use any product which may or does contain a substance or substances which is or are hazardous to health within the meaning of Regulation 2(1) Control of Substances Hazardous to

Health Regulations 2002 (or any amendment thereto), the Supplier shall supply to the site manager at the place of Delivery at the time of Delivery full details both of such produce and such substance in duplicate forthwith including but not limited to COSHH data sheets relating to all materials, equipment, goods, articles or things brought onto the place of Delivery. The Supplier shall at all times comply with RoHS (Restriction on Hazardous Substances) legislation.

In supplying such details the Supplier will include in relation to both the product and the substance, without limitation, details of any assessment or monitoring which has been carried out and any data concerned with information or training.

The Supplier shall in addition supply promptly, but no later than seven days following the Purchaser's written request, any other supporting documentation or information relating to the product which the Purchaser may reasonably request.

In considering whether any product contains a substance which falls within the above Regulations, the Supplier shall include any substance which may be comprised in the product and which may be released either by cutting, grinding, spreading or burning the product or by mixing or using the product with other products or by any other means.

The Purchaser and the Supplier acknowledge that for the purposes of this Agreement:

The Waste Electrical and Electronic Equipment (WEEE) Directive shall apply to those products which are electrical and electronic equipment falling under the categories set out in Annex 1A of the WEEE Directive.

The Supplier accepts end of life -responsibility for all electrical and electronic equipment supplied under this Agreement.

The Purchaser shall in its sole discretion decide when all or some of the electrical and electronic equipment have become WEEE.

that in accordance with Article 9 of the WEEE Directive the obligation on the Supplier to be responsible for historic waste shall only apply to the extent that the electrical and electronic equipment supplies are equivalent products or fulfil the same function of the Historic waste

The Supplier shall operate a quality system in accordance with the relevant parts of BS EN ISO 9000 or equivalent.

Without prejudice to the provisions of Clause 6, the Supplier shall at its own expense carry out such inspections and tests of the Goods/Services as may be required for the purposes of ensuring that the Goods/Services are :

Safe and without risks to health when properly used; and In full compliance with the Agreement.

## **25 Suspension**

The Purchaser shall, by notice in writing to the Supplier, be entitled to suspend the Agreement or delivery under a Purchase Order at any time. Save where a suspension order is given by reason of the Supplier's breach of the Agreement, if the Supplier's performance is delayed by such order by more than 30 days any additional cost or expense directly and unavoidably incurred by the Supplier as a result of such order shall be added to the Charges and the Purchaser shall grant an extension of time to the Supplier in accordance with Clause 6.3.

## 26 Ethical Conduct

The Supplier shall not offer or give or agree to give to any director, officer, employee or agent of the Purchaser or of the end customer any gift or consideration of any kind as an inducement or reward for doing, or for forbearing to do, or for having done, or forborne to do, any action in relation to the obtaining or execution of the Agreement or any other contract with the Purchaser or the end customer or for showing or forbearing to show any favour or disfavour to any person in relation to the Agreement and/or Purchase Order or any other contract with the Purchaser or the end Customer. In the event of breach of the Supplier's obligation under this Clause, the Purchaser may without prejudice to any other rights it may have terminate the Agreement forthwith in accordance with the provision of Sub-clause 20.1(a) and any payments already made to the Supplier under the Agreement shall be returned to the Purchaser forthwith.

### Disputes

Should a dispute arise for any reason connected with the Agreement, the matter shall be referred to a supervising manager of the Purchaser and a supervising manager of the Supplier each of whom shall have sufficient authority to resolve the dispute. They shall, within 14 days of written notice from either party to the other, meet in good faith and shall use all reasonable endeavors to resolve the dispute. In the event that the dispute is not resolved within a further 14 days accordingly the matter shall be referred to the respective managing directors of the parties.

If the parties fail to reach agreement within 28 days of the meeting then, subject to Clause 30, either party shall be free to refer any dispute or difference between them to the English Courts and in accordance with the laws of England and Wales for final determination.

### CIS Regulations

This clause shall apply to "Construction Operations" and "Plant with Operators" only (as defined in the Construction Industry Scheme ('CIS'))

Prior to commencement of the Construction Operations on site and as a condition precedent to payment, the Supplier shall inform the Purchaser in writing of its status under CIS and its UTR (if any) together with any other information required by the Purchaser to verify the Supplier's CIS status with HMRC.

The Supplier shall include on each invoice all information necessary for the Purchaser to calculate the correct CIS deduction. The Purchaser shall make the statutory deduction which is in force at the time of payment.

### CDM Regulations

This clause shall apply to Construction Operations only.

The Supplier shall comply with the CDM Regulations and assist and co-operate with the Principal Contractor and the CDM Co-ordinator named under the Agreement so as to enable the Principal Contractor and the CDM Co-ordinator to carry out their respective duties under the CDM Regulations.

### Adjudication

This clause 30 shall apply only if this Agreement constitutes a Construction Contract.

If any dispute or difference arises under the Agreement, either party may refer it to adjudication in accordance with the

provisions of Part I of the Construction Industry Scheme which are hereby incorporated into these General Conditions.

## **General**

Nothing in the Agreement shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the parties and no employee of the Supplier shall be deemed to be or have become an employee of the Purchaser.

This Agreement contains the entire agreement between the parties in relation to its subject-matter. The Supplier irrevocably and unconditionally waives any right it may have to claim damages for, and/or to rescind the Agreement because of breach of any warranty not contained in the Agreement, or any misrepresentation whether or not contained in the Agreement, unless such misrepresentation was made fraudulently.

No failure by either party to enforce its rights will prejudice or restrict that party's rights and no waiver of any such rights or any breach of any contractual term by the other party will constitute a waiver of any right or later breach.

If any provision set out herein shall be held by any court to be invalid or unenforceable, the invalidity or lack of enforceability of such provision shall not affect the other provisions of the Agreement which shall continue in full force and effect.

The Supplier shall not release any publicity whatsoever in relation to the Agreement or its relationship with the Purchaser without the prior written consent of the Purchaser (such consent not to be unreasonably withheld or delayed) provided always that nothing herein shall preclude either party from complying with an order or direction of a competent court or authority.

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act

The Purchaser's rights under this Agreement are in addition to its statutory and common law rights and not in substitution for them.

## **32 Notices**

32.1 Any notices sent under the Agreement must be in writing and may be delivered personally or by first class post (or equivalent) and in the case of post will be deemed to have been given seven (7) days after the date of posting. Notices must be delivered or sent to the parties at the addresses set out in the Agreement.