

## ► Standard Terms and Conditions of Sale and Delivery

### 1. Definitions and interpretation

#### 1.1. Definitions:

**Brexit:** the UK ceasing to be a member state of the European Union, regardless of which countries comprise the UK at such date.

**Brexit Trigger Event:** has the meaning given in clause 14.2

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Terms and Conditions.

**Customer:** the person or firm who purchases the Goods from the Supplier.

**Force Majeure:** any cause affecting, preventing or hindering the performance by a party of its obligations under the Contract arising from acts beyond its reasonable control, including, acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake, any disaster, any industrial dispute relating to the Supplier, the Supplier's personnel or any other failure in the Supplier's supply chain.

**Goods:** the goods (or any part of them) set out in the Order.

**Goods Warranty Period:** 12 months from the date of delivery in relation to Goods, except in relation Goods that are cooling units, where the relevant period is 2 years from the date of manufacture.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's order for the supply of Goods and/or Services as set out in a purchase order (or other agreed written form) or, in respect of orders placed over the internet, as set out in the forms on the Supplier's website.

**Terms and Conditions:** these terms and conditions as amended from time to time.

**Services:** the services supplied by the Supplier to the Customer as set out in the Order.

**Supplier:** Rittal Limited (company number 1389120) of Braithwell Way, Hellaby Industrial Estate, Hellaby, Rotherham S66 8QY.

- 1.2. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3. A reference to a party includes successors and permitted assigns.
- 1.4. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.5. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.6. A reference to writing or written includes email but not fax.

### 2. Basis of contract

- 2.1. The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Terms and Conditions.
- 2.2. The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3. The Supplier's published offers of Goods and Services (for example in catalogs, brochures, technical documentation or on the Internet) are non-binding and subject to change. To the extent the Supplier has given the Customer a quotation, such quotation shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.4. These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5. These Terms and Conditions apply to the sale and/or delivery of Goods manufactured by the Supplier or its suppliers. The Terms and Conditions shall also apply to all future deliveries of Goods and provision of Services to the Customer.
- 2.6. The Supplier's Standard Terms and Conditions of Sale and Delivery for Software (which can be viewed and downloaded at [www.rittal.de](http://www.rittal.de) or which the Supplier can send to the Customer upon request) shall apply preferentially in relation to purchases of software.
- 2.7. The Supplier shall be entitled to modify the Goods and Services at any time prior to delivery of the Goods or performance of the Services. The Supplier shall not be obliged to make any modifications to Goods that have

already been delivered or Services that have already been performed.

- 2.8. Only the Supplier's written acceptance of the Order shall be binding with respect to the subject matter of the Contract and the delivery date. If Orders are placed over the internet, the automated order receipt does not constitute acceptance. These Terms and Conditions apply to Orders placed over the internet.

### 3. Prices, Payment Terms, Set-Off

- 3.1. The prices for standard items can be found on the price list in effect when the Contract is entered into, unless otherwise agreed in writing by the Supplier. When information is provided regarding packaging units, the list price is per packaging unit. The list price does not include shipping, customs duties, incidental import duties, insurance, statutory value added tax (VAT), packaging and other incidental costs which shall be invoiced to the Customer. The Supplier calculates packaging costs at three percent of the list price. The Supplier shall charge for the costs of assembly, installation and start-up of systems based on actual costs.
- 3.2. If the estimated time for delivery of Goods or performance of Services is more than three months after the Commencement Date, the Supplier shall be entitled – after informing the Customer prior to the estimated delivery of Goods or performance of Services – to adjust the price of Goods or Services, including shipping, to a reasonable extent to reflect cost developments outside of the Supplier's control (e.g. input costs, exchange rate fluctuations, changes in customs duties and fees). For master agreements containing price agreements, the three-month period shall commence with the signing of the master agreement.
- 3.3. Unless otherwise agreed in writing, the Customer shall pay the amount of each invoice within 30 days of the invoice date in full and in cleared funds to a bank account nominated in writing by the Supplier. Time for payment shall be of the essence.
- 3.4. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of VAT. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 3.5. If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under these Terms and Conditions, the Customer shall pay interest on the overdue sum at 4% a year above HSBC Bank plc's base rate from time to time from the due date until payment of the overdue sum, whether before or after judgment. For deliveries of Goods, the Supplier grants a two percent discount if payment is made within 10 days after the invoice date.
- 3.6. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

### 4. Performance Period

- 4.1. Any dates quoted for delivery of the Goods and/or the performance of Services are approximate only, and the time of delivery or performance is not of the essence. The Supplier shall aim to meet quoted dates provided that all technical matters have been clarified and the Customer has fully and properly fulfilled its duty to cooperate in due time.
- 4.2. If the Supplier does not perform for reasons that are in the Supplier's reasonable control, the Customer shall provide the Supplier with a reasonable grace period of 2 weeks.
- 4.3. If any quoted delivery date is missed for reasons for which the Supplier is not responsible, the Supplier's delivery periods shall be reasonably extended.

### 5. Shipping, Transfer of Risk, Partial Performance, Call Orders

- 5.1. The Supplier shall ship the Goods at the expense and risk of the Customer. The Supplier shall determine the type of shipment, the shipping route, the freight forwarder and/or freight carrier.
- 5.2. The risk of destruction, loss or damage of the Goods shall pass to the Customer when the Goods are loaded at the Supplier's warehouse or, if the Goods cannot or will not be shipped, when the Goods are made available and notice that the Goods are ready for pick-up is sent to the Customer. This shall also apply when partial deliveries are made or when the Supplier assumes responsibility for additional services, such as shipping, or delivery and assembly.
- 5.3. Goods in the form of raw materials and semi-finished products shall be delivered unpackaged and with no surface protection, unless special protective measures are in accordance with commercial practice. For other Goods, the Supplier shall ensure suitable packaging, protection and/ or transport aids based on the Supplier's experience. Unless otherwise agreed in writing or prescribed by law, the Supplier will not accept the return of packaging, protective materials and transport aids. Additional costs incurred due to the Customer's shipping requests shall be borne by the Customer. Increases in freight rates occurring after the Commencement Date shall be borne by the Customer.
- 5.4. The Supplier shall be entitled to provide and invoice for partial performance of an Order.
- 5.5. If the Customer has agreed to call for partial deliveries of the total Order over a defined period of time, it shall give reasonable consideration to Supplier's interests. In particular, the Customer shall seek to ensure an even distribution of quantities and a reasonable lead time between an individual call order and the respective delivery date.

### 6. Force Majeure, Frustration of the Contract, Reservations with respect to Performance

- 6.1. In the event of Force Majeure affecting the Supplier or its suppliers, the Supplier's obligation to make deliveries of Goods and provide Services shall be suspended for the duration of the disruption and a reasonable recovery period. If a serious change in the circumstances existing at the Commencement Date occurs, and the Supplier cannot continue its adherence to the contract as a result, the Supplier shall be entitled to rescind the Contract.
- 6.2. The Supplier's performance of the Contract shall be subject to the reservation that such performance must not

violate the provisions of national and international foreign trade laws, sanctions or embargos.

## 7. Retention of Title

- 7.1. The Goods shall remain the Supplier's property and the Supplier shall retain title to the Goods until the Supplier receives payment in full for the Goods in accordance with clause 3
- 7.2. Until the Supplier receives payment in full for the Goods, the Customer may only dispose of Goods subject to retention of title with the Supplier's prior written consent.
- 7.3. If Goods subject to retention of title are treated or processed by the Customer, the Supplier's retention of title shall extend to the new item in its entirety. If the Customer processes, combines or mixes such Goods with third-party products, the Supplier shall acquire co-ownership of the resulting product in the ratio of the invoiced value of the Goods to that of the third-party products utilised by the Customer at the time of the processing, combination or admixture.
- 7.4. If the Customer combines or mixes Goods subject to retention of title with an item belonging to the Customer, the Customer hereby transfers its rights in the resulting item to the Supplier. If the Customer combines or mixes Goods subject to retention of title with an item belonging to a third party for a fee, the Customer hereby assigns to the Supplier, and the Supplier accepts, its compensation claims against the third party.
- 7.5. The Customer shall be entitled to resell Goods subject to retention of title in the ordinary course of business. If the Customer sells Goods subject to retention of title without receiving the full purchase price, the Customer shall agree to retention of title with its buyer, which reflects the obligations that bind the Customer under these Terms and Conditions. The Customer hereby assigns to the Supplier, and the Supplier accepts, its claims based on any such resale and its rights under the retention of title agreed by the Customer and its third party buyer. At the Supplier's request, the Customer shall be obliged to inform the third party buyer of the assignment and to provide the Supplier with the information and documentation necessary for the Supplier to assert its rights against the Customer's third party buyer. The Customer shall be entitled to collect its claims based on the resale, despite the assignment, as long as the Customer properly meets its obligations to the Supplier.

## 8. Customer's Obligations

- 8.1. The Customer shall:
  - 8.1.1. ensure that the terms of the Order are complete and accurate;
  - 8.1.2. co-operate with the Supplier in all matters relating to the Contract;
  - 8.1.3. provide the Supplier with such information and materials as the Supplier may reasonably require in relation to the Contract, and ensure that such information is complete and accurate in all material respects;
  - 8.1.4. 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.

- 8.2. 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 the 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 8.2 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.
- 8.3. The Customer shall take appropriate measure to ensure that the goods delivered to him by us under this contract and listed in the list of goods under Article 12g of Council Regulation (EU) No 833/2014, do not enter the Russian Federation either directly or indirectly. Even entering into an obligation under law of obligations aimed at this is to be refrained from, as is any arrangement that is to be qualified as circumvention of the above prohibition. If the Customer becomes aware of activities of third parties, that indicate a breach of the obligations specified in this Clause, it shall inform us immediately. The Customer shall support us to the best of its ability in clarifying and remedying the situation. A breach of this Clause constitutes a serious breach of contractual obligations which entitles us to an extraordinary termination of the contractual relationship. Furthermore, we may demand suitable remedial measure from the Customer.

## 9. Intellectual Property Rights

- 9.1. All Intellectual Property Rights in or arising out of or in connection with the Contract (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 9.2. The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## 10. Liability for Defects

- 10.1. Unless otherwise agreed below, the provisions of law shall govern the Customer's rights if there are legal defects or defects of quality, including incorrect deliveries and short deliveries as well as improper installation or defective installation instructions.
- 10.2. The Supplier warrants that on delivery (and in respect of Goods only, for the Goods Warranty Period) the Goods delivered and the Services provided by it shall (as applicable):
  - 10.2.1. conform in all material respects with their description;
  - 10.2.2. be free from material defects in design, material and workmanship;
  - 10.2.3. be of satisfactory quality (within the meaning of

the Sale of Goods Act 1979);

- 10.2.4. be fit for any purpose held out by the Supplier; and
- 10.2.5. be provided using reasonable care and skill.
- 10.3. If Goods are to be used in a country other than the United Kingdom, the Customer agrees to ensure their conformity with relevant local law and to make adjustments at its own expense, if necessary.
- 10.4. The Goods shall be defect-free if they are of the agreed-upon quality. The Supplier's product description, which was provided to the Customer before the placement of its Order or included in the Contract in the same way as these Terms and Conditions, shall be controlling. There shall be no additional declaration of obligation (independent guarantee) with respect to claims for defects, unless the Customer has entered into a separate agreement with the Supplier, which governs the scope and legal consequences of the independent guarantee in detail.
- 10.5. Subject to clause 10.6, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:
  - 10.5.1. the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause
  - 10.5.2. the Supplier is given a reasonable opportunity of examining such Goods; and
  - 10.5.3. the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.
- 10.6. The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 10.2 if:
  - 10.6.1. the Customer makes any further use of such Goods after giving a notice in accordance with clause 10.5;
  - 10.6.2. the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - 10.6.3. the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
  - 10.6.4. the Customer alters or repairs such Goods without the written consent of the Supplier;
  - 10.6.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - 10.6.6. the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 10.7. Subject to clauses 10.5 and 10.6, the place of performance for rectification of any defect shall be the original place of delivery, unless performance at a different location is in line with the intended use. The Customer shall bear any additional costs incurred by performance at a place with restricted access (including offshore platform, restricted area, polar or high alpine region).
- 10.8. If the Supplier fails to rectify any material defect despite two attempts or default despite being provided with a reasonable grace period, the Customer may rescind the

Contract, and waives any additional rectification of the defect, or to seek to reduce the purchase price by the value of the defect.

## 11. Liability

- 11.1. Nothing in these Terms and Conditions shall limit or exclude the Supplier's liability for:
  - 11.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 11.1.2. fraud or fraudulent misrepresentation;
  - 11.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
  - 11.1.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).
- 11.2. Subject to clause 11.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
  - 11.2.1. loss of profits;
  - 11.2.2. loss of sales or business;
  - 11.2.3. loss of agreements or contracts;
  - 11.2.4. loss of anticipated savings;
  - 11.2.5. loss of use or corruption of software, data or information;
  - 11.2.6. loss of or damage to goodwill; or
  - 11.2.7. any indirect or consequential loss.
- 11.3. Subject to clause 11.1 and 11.2, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the price of the Goods and/or Services.
- 11.4. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.5. This clause 11 shall survive termination of the Contract.

## 12. Custom-Made Goods

If Goods made to the Customer's specifications are not accepted, the Supplier shall be entitled to dispose of the Goods at the Customer's expense after the expiration of a reasonable pick-up period provided to the Customer.

## 13. Delivery of Spare Parts

To the extent that the Supplier is required to supply the Customer with spare parts, the Supplier shall be entitled to supply the Customer with functionally identical spare parts instead of original spare parts or to identify another source of supply for the Customer after 2 years. The same shall apply to the provision of support services needed for operation.

## 14. Brexit

- 14.1. If a Brexit Trigger Event occurs, the Supplier may:
  - 14.1.1. require the Customer to promptly commence negotiations in good faith to agree an amendment to the Contract to alleviate the Brexit Trigger Event; and
  - 14.1.2. if no such amendment is made to the Contract within 30 days, terminate the Contract by giving

the Customer not less than 14 days' written notice. On termination under this clause, clause 17 (Consequences of termination) shall apply.

14.2. **Brexit Trigger Event** means any of the following events occurring at any time, if caused by Brexit:

- 14.2.1. a material adverse impact in the Supplier's ability to perform the Contract in accordance with its terms and/or the law; or
- 14.2.2. an increase in the costs incurred by the Supplier in performing the Contract of at least [10]% since the price of the Products and/or Services was last agreed.

## 15. Confidentiality

- 15.1. Each party shall treat the business and trade secrets of the other party as confidential, and, in particular, shall not disclose them to third parties or exploit them for their own business purposes without written authorisation. Each party may disclose the other party's confidential information to its employees, officers, representatives, subcontractors, advisers or agents who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors, advisers or agents to whom it discloses the other party's confidential information comply with this clause 15. Each party may disclose the other party's confidential information as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 15.2. The duty of confidentiality shall not apply to information, which, at the time of its disclosure,
  - 15.2.1. was already known to the other party outside of the contractual relationship;
  - 15.2.2. was self-developed or lawfully acquired from third parties; or
  - 15.2.3. was public knowledge or prior art.
- 15.3. At the end of the contractual relationship, each party shall return all confidential information belonging to the other party, whether in tangible or digital form, on its own initiative or destroy such information at the request of the party from which it originated or irrevocably delete it – to the extent that this is technically possible at a reasonable expense.

## 16. Termination

- 16.1. Without affecting any other right or remedy available to it, the Supplier may terminate the Contract by giving the Customer not less than three months' written notice.
- 16.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
  - 16.2.1. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- 16.2.2. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 16.2.3. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

16.3. Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- 16.3.1. the Customer fails to pay any amount due under the Contract on the due date for payment; or
- 16.3.2. there is a change of control of the Customer.

16.4. Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause

16.2.1 to clause 16.2.3, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## 17. Consequences of termination

- 17.1. On termination of the Contract:
  - 17.1.1. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 17.1.2. the Customer shall return all of the Supplier's materials and any deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 17.2. Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 17.3. Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## 18. General

- 18.1. **Compliance with laws:** Each party shall comply with all applicable laws, rules, regulations, decrees, code of practice, ordinances, licenses and consents in the performance of their obligations under the Contract including without limitation any data protection laws. The Customer will fully indemnify, keep indemnified and hold harmless the Supplier on demand from and against any and all losses, liabilities, costs (including (without limitation) legal costs and VAT), charges, expenses, fines, penalties, demands and damages (including

(without limitation) the amount of damages awarded by a court of competent jurisdiction) arising out of or in connection with the Customer's failure to comply with any data protection laws.

- 18.2. **Assignment and other dealings:** The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.
- 18.3. **Notices:**
- 18.3.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 18.3.2. Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 18.3.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 18.4. **Severance:** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 18.5. **Variation:** Except as set out in these Terms and Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 18.6. **Waiver:** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.7. **Entire agreement:** The Contract contains the entire agreement between the parties and supersedes any previous agreement or understanding between the parties. Each of the parties acknowledges and agrees that it has not entered into the Contract in reliance on any understanding, warranty, statement or representation of any person (whether a party to the Contract or not) other than as expressly set out in the Contract. Each party agrees that it shall have no claim

for any misrepresentation (other than a fraudulent misrepresentation) not contained in the Contract.

- 18.8. **No partnership or agency:** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 18.9. **Third parties rights:** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

## 19. Jurisdiction, Choice of Law, Dispute Resolution

- 19.1. It is the intention of the Supplier and the Customer to resolve issues in a constructive and bona-fide way that reflects the concerns and commercial interests of each party. The parties will attempt to resolve disputes prior to the initiation of court proceedings. Nothing in this clause 19.1 will restrict either party's freedom to seek any equitable remedy. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 19.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

## Special Provisions for the performance of Services

If the Supplier has agreed to assemble, install or place the Goods delivered by it into operation, the following provisions shall apply as a supplement.

## 20. Subcontractors

The Supplier shall be entitled to use subcontractors for the provision of Services.

## 21. The Customer's Duty to Cooperate

- 21.1. The Customer shall complete all necessary earth-moving work, construction work and other ancillary work outside the scope of the Supplier's industry and expertise at the Customer's own expense in due time before the start of the provision of the Services. In addition, the Customer shall provide the necessary specialists and support personnel, building materials and tools, commodities and consumables needed for installation and start-up, such as scaffolding, hoisting devices and other devices, fuel and lubricants as well as connections for energy and water at the place of use as well as heating and lighting in due time.
- 21.2. The Customer shall ensure storage of the materials needed for assembly or installation at the installation site, such as machine parts, equipment and tools. The Customer shall be obliged to provide accommodation, particularly sufficiently large, dry and lockable rooms, and reasonable working and break rooms for the installation personnel. Protective clothing and devices, which may be necessary due to special conditions at the installation site, shall be provided by the Customer at the Customer's cost.
- 21.3. Promptly prior to the start of the installation Services, the Customer shall provide the Supplier with the necessary information regarding the location of subsurface electrical, telecommunications, gas and water conduits or

other vulnerable equipment and the necessary load-bearing information.

21.4. If assembly, installation or formal acceptance is delayed due to circumstances that are not the Supplier's responsibility, the Customer shall bear the additional costs for waiting periods and any additional trips by the Supplier's installation personnel.

## 22. Formal Acceptance

22.1. If the Customer requires that the Supplier's performance of Services be formally accepted, the Customer shall conduct any acceptance procedure within 12 Business Days, unless otherwise agreed. If no formal acceptance is requested, the performance shall be deemed to have been accepted at the expiration of 30 Business Days after written notice of completion. If no formal acceptance is requested and the Customer has begun using the Goods or a part thereof, shall be deemed to have been granted after the expiration of 6 Business Days from the start of use, unless otherwise agreed.

22.3. With formal acceptance, the risk shall pass to the Customer, to the extent that the risk has not already passed to the Customer in accordance with clause 5.

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