

TERMS AND CONDITIONS

THE CUSTOMER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSE 12

1 DEFINITIONS, INTERPRETATION AND GENERAL

- 1.1 In these Standard Terms:
- (a) **'Business Day'** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
 - (b) **'Charges'** has the meaning given to it in clause 10.1;
 - (c) **'Company'** the Group Company as set out in the Order;
 - (d) **'Customer'** means the individual, firm, company or other party with whom the Company contracts;
 - (e) **'Contract'** the contract between the Company and the Customer for the Supply of Goods and/or Services in accordance with these Standard Terms;
 - (f) **'Defective Goods'** Goods which by reason of fault or incorrect design or workmanship on the part of the Company are found to be defective or fail or are unable to perform in accordance with the Contract;
 - (g) **'Deliverables'** deliverables set out in the Order produced by the Company for the Customer;
 - (h) **'Delivery Date'** means in respect of any Goods (either the whole of the Goods or any instalment, as the context shall permit) which are ready for delivery:
 - (i) the date such Goods or instalment of Goods are delivered;
 - (ii) the date such Goods or instalment of Goods are deemed to be delivered pursuant to clause 6.2(a); or
 - (iii) where Goods or an instalment of Goods are ready for delivery and delivery is postponed at the Customer's request, the date upon which such request for postponement is notified to the Company, whichever shall first occur;
 - (i) **'Euro'** means the single currency according to European Community law;
 - (j) **'Force Majeure Event'** means any event beyond a party's reasonable control which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, pandemics or epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors;
 - (k) **'Goods'** any goods, materials, parts or other deliverables, or any part of them, supplied by the Company to the Customer as set out in the Order;
 - (l) **'Group Company'** LB Foster (Rail Technologies) UK Limited, its subsidiaries or holding companies from time to time and any subsidiary of any holding company from time to time;
 - (m) **'Intellectual Property Rights'** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, 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;
 - (n) **'International Supply Contract'** means such a contract as is described in section 26(3) of the Unfair Contract Terms Act 1977;
 - (o) **'Intervening Event'** means any of the following:
 - (i) failure by the Customer to make any payment when it becomes due;
 - (ii) breach by the Customer of any of the terms or conditions of the Contract;
 - (iii) the Customer's proposal for or entry into any composition or arrangement with creditors;
 - (iv) the presentation against the Customer of any petition for a bankruptcy order, administration order, winding-up order or similar process;
 - (v) the appointment of an administrative receiver or receiver in respect of the business of any part of the assets of the Customer;
 - (vi) the Company forming the reasonable opinion that the Customer has become or is likely in the immediate future to become unable to pay his, her or its debts (adopting, in the case of a company, the definition of that term set out in section 123 of the Insolvency Act 1986); and
 - (vii) any event occurring, or proceeding being taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 1.1(o)(iii) to clause 1.1(o)(vi) (inclusive);
 - (p) **'Manufacturer's Warranties'** the warranties given by any third-party manufacturer in relation to Goods;
 - (q) **'Open Source Software'** any software programs which are licensed under any form of open-source licence meeting the Open Source Initiative's open source definition from time to time;
 - (r) **'Order'** the Customer's order for the supply of Goods and/or Services;
 - (s) **'Services'** the services, including the Deliverables, supplied by the Company to the Customer as set out in the Order;
 - (t) **'Site'** means the location where the Services are to be performed or Goods are to be supplied, as set out in the Order;
 - (u) **'Standard Terms'** means these standard conditions and any other terms set out or referred to in the Company's quotation;
 - (v) **'Third Party Software'** that software the rights in which are owned in whole or in part by one or more third parties that the Company agrees to supply to the Customer under a Contract as may be set out in the Order;
 - (w) **'Third Party Software Licence'** the Third Party Software Vendor's licensing terms for the Third Party Software from time to time.
 - (x) **'Third Party Software Vendor'** a third party that has granted to the Company the right to distribute the Third Party Software and resell licences for the Third Party Software;
 - (y) **'Third Party Specification'** has the meaning given to it in clause 3.1; and
 - (z) **'Warranty Period'** means the period commencing on completion of the supply of the Services and concluding twelve (12) months from the supply date.
- 1.2 Interpretation:
- (a) The headings in these Standard Terms are for convenience only and are not for the purpose of interpretation.
 - (b) Any reference in these Standard Terms to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
 - (c) References to clauses are to clauses of these Standard Terms, unless stated otherwise.
 - (d) A reference to a party includes its successors and permitted assigns.
 - (e) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- #### 2 BASIS OF CONTRACT
- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Standard Terms. The Customer is responsible for ensuring that the terms of the Order and any applicable specification are complete and accurate.
- 2.2 The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.3 Any Contract shall be subject to these Standard Terms and, save as set out in these Standard Terms, no representative or agent of the Company has authority to agree any terms or make any representations inconsistent with them or to enter into any contract except on the basis of them.
- 2.4 Unless otherwise agreed in writing by the Company (which shall include anything contained in any quotation delivered by the Company to the Customer) these Standard Terms shall apply to the exclusion of any terms and conditions stipulated or referred to by the Customer in an Order (whether by written purchase order or otherwise) or pre-contract negotiations or any inconsistent terms implied by law or trade custom, practice or course of dealing.
- 2.5 Where the Company has not given a written acknowledgment of Order, these Standard Terms will nonetheless apply to the Contract provided that the Customer has had prior notice of them.
- 2.6 A quotation for the Goods and/or Services given by the Company shall not constitute an offer. A quotation shall only be valid for a period of 20 (twenty) Business Days from its date of issue and is

- subject to withdrawal or revision at any time before acceptance of the Order by the Company in accordance with clause 2.2.
- 2.7 Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the goods and/or services described in them. They shall not form part of the Contract or have any contractual force.
- 2.8 The Company reserves the right to correct any clerical or typographical error made by its employees (including in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued) at any time.

3 SPECIFICATION, INSTRUCTION OR DESIGN

- 3.1 If Goods are made to a specification, instruction or design supplied by the Customer or any third party on behalf of the Customer ('**Third Party Specification**') then:
- (a) the suitability and accuracy of the Third Party Specification will be the Customer's responsibility;
- (b) the Company reserves the right to amend the Third Party Specification if required by any applicable statutory or regulatory requirements;
- (c) the Customer will indemnify the Company against:
- (i) all infringement or alleged infringement of any third party's Intellectual Property Rights and any loss, damage or expense which it may incur by reason of any such infringement or alleged infringement in any country in connection with the Third Party Specification; and
- (ii) any loss, damage or expense in respect of any liability arising in any country by reason of the Goods being made or the Services being provided to such Third Party Specification; and
- (d) the Customer undertakes to ensure that all necessary permissions or consents (including those of third parties) are obtained in order to permit the Company to supply the Goods in accordance with the relevant Third Party Specification.
- 3.2 This clause 3 shall survive termination of the Contract.

4 CUSTOMER'S RESPONSIBILITIES

- 4.1 The Customer shall provide the Company with adequate instructions and accurate information regarding the Goods and Services it wishes to purchase from the Company. If the Company suffers any delay caused by the Customer's inadequate instructions or inaccurate information, or delay caused by the Customer's failure to give the Company adequate instructions or accurate information, the supply of Goods and Services shall be extended for such period as the Company may reasonably require.
- 4.2 Where the Company has supplied Goods to the Customer accompanied by a test certificate, the Customer shall maintain a record of the identity of such Goods from the date of delivery until such time as the Goods are installed/incorporated into other items and records in respect of maintenance works carried out to or in respect of the Goods.
- 4.3 If the Customer modifies any Goods, the Company shall have no liability in respect of any loss or damage arising from or in connection with any defect of failure in such Goods or any error regarding weight, dimensions, capacity.
- 4.4 The Customer shall store the Goods in clean, dry, well-ventilated conditions and shall maintain and use the Goods in accordance with any recommendations made by the Company.
- 4.5 The Customer agrees to have due regard to all information supplied by the Company relating to the use of the Goods necessary to ensure the Goods will be safe and do not pose a risk to the health and/or safety of any person at all times when the Goods are being set, used, cleaned or maintained by any person.
- 4.6 Where the Goods and/or Services are to be provided at the Site, the Customer shall:
- (a) promptly provide to the Company, its employees, agents, consultants and subcontractors, such access to the Customer Site as is reasonably required by the Company for the supply of the Goods and/or provision of the Services;
- (b) maintain the Site in good order for the supply of the Services and in accordance with all applicable laws;
- (c) be responsible for ensuring the health and safety of the Company's employees, agents, consultants and subcontractors, whilst they are at the Site;
- (d) inform the Company of all health, safety and security rules, regulations and requirements that apply at the Site;
- (e) maintain reasonable insurance cover for the Company's employees, agents, consultants and subcontractors, whilst they are working at the Site (including reasonable public liability insurance); and

- (f) ensure that its premises and all plant and equipment which is used by the Company's employees or sub-contractors or with which they may come into contact or to which they may be exposed complies with the Health and Safety at Work Act 1974, all relevant statutory provisions (as defined in that Act) and all other obligations imposed by statute and common law relating to health and safety and will indemnify the Company against any loss, damage or expense in respect of any failure by the Customer to comply with its obligations.
- 4.7 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer, a breach of any provisions of the Contract by the Customer, or failure by the Customer to perform any relevant obligation ('**Customer Default**'), then:
- (a) without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend supply of the Goods and/or performance of the Services under the Contract 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's Default prevents or delays the Company's performance of any of its obligations;
- (b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause; and
- (c) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer's Default.
- 4.8 Except where otherwise stated in the Order, the Customer must obtain at its own cost all licences, permissions and consents ('**Consents**') required to enable the Company to carry out and complete the supply Goods and/or Services and the Customer must comply with any conditions contained in the Consents relating to the Goods and the supply of Services or the Site.
- 4.9 The Customer acknowledges that Goods for delivery outside of the United Kingdom may be subject to United Kingdom export controls as well as import controls at their destination. The Customer will be responsible for ensuring that all necessary clearances and licences are obtained prior to the despatch dates for the Goods to be supplied and for obtaining all necessary documentation and lodging the same with the Company prior to despatch of the Goods.
- 4.10 The Customer warrants that it will pass on to all third parties to whom it may supply the Goods or any of them all information as to the use and safe handling of such Goods as may have been provided to the Customer by the Company.

5 SUPPLY OF THE GOODS AND/OR SERVICES

- 5.1 The Company shall provide the Goods and/or Services:
- (a) using reasonable skill and care; and
- (b) in accordance with the Order in all material respects.
- 5.2 All Goods supplied by the Company are supplied with the benefit of the terms implied by section 12 of the Sale of Goods Act 1979.
- 5.3 The Company shall have the right to make any changes to the Goods and/or Services which are necessary to comply with any applicable law or safety requirement or which do not materially affect the quality of the Goods and/or Services, and the Company shall notify the Customer in any such event.
- 5.4 While the Company will endeavour to deliver the Goods and deliver the Services by any date or within any period agreed upon, such dates and periods are estimates only, given in good faith, and the Company will not be liable for any failure to deliver by or within such a period nor shall delays in the delivery of an Order entitle the Customer to refuse to take delivery of an Order. Time for delivery shall not be of the essence of the Contract.

6 DELIVERY OF GOODS

- 6.1 For all Contracts other than International Supply Contracts and unless otherwise specified in writing by the Company, the Company shall deliver the Goods to the Site or to such other location as the parties may agree at any time after the Company notifies the Customer that the Goods are ready.
- 6.2 If the Contract requires the Customer to take delivery of the Goods at the Company's premises or such other location as may be specified by the Company then:
- (a) for the purposes of this sub-clause 'the Goods' shall mean the whole or any instalment of the Goods and 'the collection date' shall mean the date on which the Goods are or will be ready for delivery; and
- (b) the Company shall notify the Customer of the collection date and the Customer shall take delivery of the Goods within 5 (five) days of the collection date.
- 6.3 If the Customer shall for any reason fail to take or accept delivery of the Goods on the agreed date or dates, delays in doing so or fails to

provide a delivery address pursuant to an Order then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract, without prejudice to any other rights of the Company whether under these Standard Terms or otherwise:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Company notified the Customer that the Goods were ready; and
- (b) the Company shall be entitled to make an additional charge in respect of any delay caused by such failure and for any costs incurred as a result of repeated delivery necessitated by such failure.

6.4 If the Contract is an International Supply Contract it shall be deemed to incorporate the latest edition of Incoterms current at the date of the Contract save that in the event of any inconsistency between the Incoterms and any express term of the Contract (including these Standard Terms) the latter shall prevail. The Company shall be under no obligation to give the Customer the notice specified in section 32(3) of the Sale of Goods Act 1979.

6.5 The Customer shall not be entitled to reject the Goods if the Company delivers up to and including 10% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

7 TESTS AND MARKING

7.1 If the Company agrees to carry out any tests, certification or marking in respect of the Goods, it shall be entitled to charge therefor.

7.2 The Customer shall pay to the Company an amount equal to any costs payable to third parties in respect of any tests, independent design review or report carried out by that third party in respect of the Goods at the request of the Customer together with an administration fee (equal to 10% of the third party costs) in respect of the Company procuring the same.

7.3 If the Company agrees that any tests shall be carried out in the presence of the Customer or his representative, the Company shall notify the Customer of the date from which it is or will be ready to carry out such tests. The Customer undertakes that he or his representative will, by prior appointment, attend at the premises where the Goods are situated within 3 (three) days after such date for the purpose of witnessing such tests and agrees that in default of such attendance the Company may proceed with the tests in his absence and he shall be bound by the results thereof.

8 RISK IN THE GOODS

8.1 Save in the case of International Supply Contracts and subject to any agreement in writing by the Company, the risk in Goods which the Company agrees to supply shall pass to the Customer on the relevant Delivery Date.

8.2 Delivery shall be deemed to be completed immediately before loading of the Goods.

8.3 All other goods or materials shall be at the Customer's sole risk at all times, and the Company shall not be liable for any loss or damage sustained by any goods or materials left with the Company, howsoever caused and whether or not attributable to negligence on the part of the Company or negligence or wilful default on the part of any employee or agent of the Company. The Customer shall adequately insure such goods and materials in respect of loss or damage whilst the same are under the Company's control and/or in transit from and to premises occupied by the Company.

9 RETENTION OF TITLE

9.1 The following provisions shall apply to all Contracts other than International Supply Contracts and to all Goods which under the Contract the Company agrees to supply to the Customer. No failure by the Company to enforce strict compliance by the Customer with such provisions shall constitute a waiver thereof and no termination of the Contract shall prejudice limit or extinguish the Company's rights under this clause.

- (a) Upon delivery of the Goods the Customer shall hold the Goods solely as bailee for the Company and the Goods shall remain the property of the Company until such time as the Customer shall have paid to the Company and the Company shall have cleared funds for the full purchase price of all Goods, whether under the Contract or otherwise. Until this time the Company shall be entitled to recover the Goods or any part thereof and, for the purpose of exercising such rights, the Customer hereby grants a licence to the Company its employees and agents (together with appropriate transport) to enter upon the Customer's premises and any other location where the Goods are situated and remove the Goods.

- (b) The Customer is hereby granted a licence by the Company to incorporate the Goods in any other products.

- (c) The licence granted under sub-clause 9.1(b) shall extend to detaching the Goods from any property to which they are attached or into which they have been incorporated or from any other products or goods to which they have been incorporated or from any other products or goods to which they have been attached pursuant to the licence granted under sub-clause 9.1(b).

- (d) The Customer is hereby licensed to agree to sell on the Goods and any products incorporating any of them on condition that the Customer shall inform its customer of the provisions of sub-clauses 9.1(a) to 9.1(c). The Customer acts as the Company's bailee in respect of any such sale and shall immediately upon receipt of the proceeds of sale, and whether or not payment has become due under clause 11 remit to the Company the full purchase price of the Goods sold on less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company.

- (e) The Customer shall maintain appropriate insurance in respect of the Goods from the date or dates on which the risk therein passes to him. In the event of any loss or damage occurring while the Goods remain the property of the Company the Customer shall immediately on receipt of the insurance monies, remit to the Company the full purchase price of the Goods lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company. For the avoidance of doubt the provisions of this sub-clause do not affect the Customer's obligations under clause 11.

- (f) The licences granted under such sub-clause 9.1(b), 9.1(c) and 9.1(d) shall be terminable forthwith at any time upon notice by the Company to the Customer

9.2 In the case of International Supply Contracts, property in the Goods shall pass to the Customer on delivery.

9.3 All tooling purchased or produced by the Company shall be and remain the property of the Company unless otherwise agreed in writing, notwithstanding that the Customer may have made payment or part payment therefor.

10 CHARGES

10.1 The Company shall render invoices in respect of the Goods and Services comprising fees, expenses, disbursements, outlays and VAT thereon (where appropriate) ('Charges'). Details of the Charges and any special payment terms are set out in the Order.

10.2 Unless otherwise agreed in writing, the Company shall be entitled to increase its prices at any time to take account of any increase in the cost to the Company of purchasing any goods or materials or manufacturing, working on or supplying any Goods or Services (including, but not limited to, any such increase arising from any error or inadequacy or change to any Third Party Specification, any modification carried out by the Company at the Customer's request, any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions or any change in labour costs, taxes, customs duties, freight charges, insurance premiums or foreign exchange rates) and such increased prices ruling at the date of supply of the Goods and/or Services shall be substituted for the previous contract price. In particular, but without prejudice to the generality of the foregoing, if the Charges are specified or payable in the Euro or in a currency other than pounds sterling ('the Payment Currency'), the Company shall be entitled to increase the Charges to take account of any change in the exchange rates between pounds sterling and the Payment Currency (as evidenced by the exchange rates quoted by HSBC Bank plc) which is to the detriment of the Company and which occurs between the acceptance of the Order and the actual payment of the Charges.

10.3 If the Customer shall for any reason prevent (or allow any other person to prevent) the Company (or its subcontractors) from supplying the Goods and/or Services (or any part thereof) on the agreed date or dates, except where such prevention is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract and without prejudice to any other rights of the Company whether under these Terms or otherwise, the Company shall be entitled to make an additional charge in respect of any costs incurred as a result of repeated provision of the Goods and/or Services necessitated by that failure.

10.4 All prices are quoted are exclusive of VAT and the Customer shall pay any and all taxes, duties and other governmental charges payable in respect of the Goods and/or Services.

10.5 Without prejudice to the generality of clause 10.4, in respect of Goods which have been the subject of claims by the Company for inward processing relief, duty may be charged (in addition to the

- Company's prices) in the event that the Customer is in the European Community.
- 10.6 The price of the Goods is exclusive of the costs and charges of inspection, packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 10.7 The Company may invoice the Customer for the Goods and Services on or at any time after the completion of delivery or performance (as applicable).
- 10.8 The Company shall be entitled to defer delivery until any monies due from the Customer have been received.

11 PAYMENT

- 11.1 The Company reserves the right to submit invoices to the Customer at reasonable intervals or whenever appropriate having regard to the Contract.
- 11.2 Unless otherwise specified in writing by the Company, the Customer shall pay any invoice in full and in cleared funds within 30 (thirty) days of the first day of the month following the month the invoice was dated. Payment shall be made to the bank account nominated in writing by the Company. Time of payment is of the essence.
- 11.3 In the event that the Customer makes payment in any currency other than the agreed currency, then the Customer shall:
- pay to the Company a handling charge equal to 10% of the amount paid other than in the agreed currency; and
 - indemnify the Company in respect of all costs and expenses payable by the Company to third parties (including, but not limited to, commission payable to a bank or other financial institution) in respect of the conversion of the amount paid into the agreed currency.
- 11.4 Without prejudice to any other rights it may have, the Company reserves the right to charge interest at HSBC Bank plc's base rate plus 4% or at the rate specified from time to time under the provisions of Late Payment of Commercial Debts (Interest) Act 1988 (whichever is the higher) on all overdue accounts and for the purposes of clauses 9 and 17 the full purchase price of the Goods and/or Services shall include all interest payable hereunder.
- 11.5 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.
- 11.6 In the event that the currency in which the Company has specified payment is to be made is fully replaced by the Euro, the contract price shall be exclusively owed in Euro and this shall not have the effect of terminating the Contract.
- 11.7 The Customer shall pay to the Company an amount equal to any costs and expenses incurred (on a full indemnity basis) by the Company in recovering from the Customer any monies due and payable by the Customer to the Company and for the purposes of clauses 9 and 17 the full purchase price of the Goods and/or Services shall include all costs and expenses payable hereunder.

12 LIMITATION OF LIABILITY

- 12.1 Nothing in these Standard Terms shall limit or exclude the Company's liability for:
- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - fraud or fraudulent misrepresentation;
 - breach of the terms implied pursuant to clause 12.3; or
 - any liability specifically assumed by the Company pursuant to clause 12.4.
- 12.2 Without prejudice to clauses 12.1(a), 12.1(b) and 12.1(c), the Company shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, goodwill or business opportunity or any indirect or consequential loss arising under or in connection with the Contract.
- 12.3 The Company has given commitments as to compliance of the Goods and Services in clause 5. In view of these commitments, all other conditions, warranties and other terms, express or implied, statutory or otherwise, are expressly excluded, save insofar as expressly provided otherwise in these Standard Terms or as otherwise expressly agreed by the Company in writing provided that if and to the extent that any legislation (or any order made pursuant to it) shall make or have made it unlawful to exclude or purport to exclude from the Contract any term or shall have made unenforceable any attempt to exclude any such term, the foregoing provisions of this clause will not apply to any such term.
- 12.4 In the event of any negligence or wilful default on the part of the Company, its employees, agents of sub-contractors in respect of in or

in connection with the supply of any Defective Goods or the design or manufacture thereof or in the carrying out of any work, the Company shall have no liability to the Customer save as otherwise provided in this clause 12.4:

- The Company's liability is limited to re-supplying (with new Goods) or (at its discretion) repairing or paying for the repair or re-supply of Goods, in the case of defects apparent upon inspection, provided that such defect is notified by the Customer to the Company within 14 (fourteen) days of delivery and, in the case of defects not so apparent, provided such notification is made within 12 (twelve) months of delivery to the Customer.
 - Without prejudice to clause 3, the Goods shall not be deemed to be defective by reason that they are not fit for their purpose unless the Customer and the Company have undertaken as part of the Contract to be solely responsible for providing the Goods for the exact purpose.
 - In the event of any error in any weight, dimension, capacity, performance or other description which is part of a Contract, the Company's liability in respect of any direct loss or damage sustained by the Customer as a result of such error shall not exceed the price of the Goods in respect of which the description is incorrect.
 - A condition precedent to the Company's liability hereunder shall be that the Customer shall have given to the Company reasonable notice of the defect, failure or error and shall have provided authority for the Company's servants or agents to inspect the Goods.
 - The Company shall have no other or further liability in respect of any direct or consequential loss (including but not limited to loss of profits, loss of business or other economic loss) or damage sustained by the Customer arising from or in connection with any such breach, defect, failure or error as aforesaid.
- 12.5 The Company will have no liability for damage in transit, shortage of delivery or loss of Goods unless:
- the damage in transit, shortage of delivery or loss of Goods is directly attributable to any negligence or wilful default on the part of the Company, its employees, agents of sub-contractors; and
 - the Customer shall have given to the Company written notice of such damage, shortage of loss (together with reasonable particulars thereof) within 3 (three) days of receipt of the Goods or (in the case of total loss) the receipt of the invoice or other notification of despatch.
- The Company's liability, if any, shall be limited to re-supplying or (in its discretion) repairing such Goods and it shall be a condition precedent to any such liability that the Customer shall, if so requested, provide authority for the Company's employees or agents to inspect any damaged Goods within 14 (fourteen) days of such request.
- 12.6 For the purposes of clause 12.4, the expression "the carrying out of any work" shall, without prejudice to its generality include the carrying out of all work done in or in connection with the design, manufacture, treatment, testing, delivery, erection, installation, repair or servicing of any Goods or in the preparation or provisions of any information or advice.
- 12.7 This clause and these conditions shall have effect subject to the provisions of section 2(1) of the Unfair Contract Terms Act 1977.

13 WARRANTY

- 13.1 The Company shall as far as it is able pass on to the Customer the benefits of any Manufacturer's Warranties if the Goods which the Company supplies to the Customer are new. The Company does not offer any other warranty in the Goods.
- 13.2 In relation to Services only (excluding the supply of any ancillary Goods in respect of which the Company's only obligation is to, as far as it is able, pass on to the Customer the benefits of any Manufacturer's Warranties) and subject always to Clauses 13.4 and 13.5, the Company warrants that on completion of the supply of the Services and for the Warranty Period the Services shall be free from material defects in workmanship. The Company shall re-perform (or pay reasonable costs for the re-performance) of the Services which the Company's examination confirms are defective in accordance with this clause 13.
- 13.3 The parties acknowledge and agree in respect of the Services that:
- the Customer shall make a full inspection of the Services upon completion;
 - the Customer shall notify the Company with a written notice containing full particulars of any defects and the circumstances in which defects occurred ("**Defective Services**"), within:
 - (in the case of defects apparent upon inspection) 14 (fourteen) days of delivery; and
 - in the case of defects not so apparent, provide such notification within a reasonable time of discovery (in any event within the Warranty Period);

- (c) the Customer shall provide the Company with working access to examine the Services without costs to the Company;
 - (d) the Customer shall take all appropriate steps to mitigate damage caused by the Defective Services; and
 - (e) the Customer shall provide the Company with adequate time and opportunity in which to re-perform any part of the Defective Services.
- 13.4 The Company shall not be liable for the Defective Services if:
- (a) the defect arises because the Customer failed to follow the Company's oral or written instructions as to use or maintenance of the Services whether set out in the Order or otherwise or (if there are no oral or written instructions) because the Customer failed to follow good trade practice;
 - (b) the defect arises as a result of the Company following any Third Party Specification;
 - (c) the Customer or a third party alters or repairs the product of the Services;
 - (d) the defect is due to circumstances which existed before the transfer of risk occurred and is not as a result of fair wear and tear;
 - (e) the product of the Services has been subjected to improper use, accident or improper maintenance by the Customer or a third party; or
 - (f) the Customer prevents the Company from remedying the defect.
- 13.5 The re-performance of Defective Services during the Warranty Period in accordance with Clause 13.2 shall not as regards to such Services extend the period of warranty therein provided.
- 13.6 Where the Company re-performs Services in accordance with the foregoing provisions of this clause 13 or otherwise, any time specified for delivery shall be extended for such period as the Company may reasonably require.
- 13.7 The Customer's remedies under this clause shall be in place and to the exclusion of any other remedy to the Customer in relation to the defects (including latent defects) in the Services and any Goods including damage arising therefrom (whether the claims are based in contract, tort, negligence, indemnity or any other legal theory whatsoever). Any and all other warranties, terms and conditions, express or implied which may have otherwise applied in relation to such matter are excluded to the extent allowed under law.
- 13.8 The Customer acknowledges that any Open Source Software provided by the Company is provided "as is" and is expressly subject to the disclaimer in clause 13.9.
- 13.9 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 14 CHANGE CONTROL**
- 14.1 The Company shall have the right to make any changes to the Goods and/or Services which are necessary to comply with any applicable law or safety requirement or which do not materially affect the quality of the Goods and/or Services, and the Company shall notify the Customer in any such event.
- 14.2 Without prejudice to clause 14.1, either party may propose changes to the scope or execution of the Goods and/or Services but no proposed changes shall come into effect until a Change Order has been signed by both parties. A change order ("**Change Order**") shall set out the proposed changes and the effect that those changes will have on:
- (a) the Goods and/or Services;
 - (b) the Charges and payments;
 - (c) the timetable of the supply of the Goods and/or Services; and
 - (d) any of the terms of the Contract.
- 14.3 If the Company wishes to make a change to the supply of the Goods and/or Services, it shall provide a draft Change Order to the Customer.
- 14.4 If the Customer wishes to make a change to the Goods and/or Services:
- (a) it shall notify the Company and provide as much detail as the Company reasonably requires of the proposed changes, including the timing of the proposed changes; and
 - (b) the Company shall, as soon as reasonably practicable after receiving the information at clause 14.4(a), provide a draft Change Order to the Customer.
- 14.5 If the parties:
- (a) agree to a Change Order, they shall sign it and that Change Order shall amend the Contract; or
 - (b) are unable to agree a Change Order, then both parties shall, unless otherwise agreed in writing, continue to perform the Contract in compliance with its terms prior to such Change Order).
- 14.6 The Company may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 14.4.
- 15 INTELLECTUAL PROPERTY RIGHTS**
- 15.1 Unless otherwise agreed in writing by the Company, any Intellectual Property Rights in the Services, any Goods and in any tooling and in any drawings of other documentation supplied or produced by the Company shall vest in and remain vested in the Company, and the Customer agrees to execute any documents the Company deems necessary to give effect to this clause 15.1.
- 15.2 The Company grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 15.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 15.2.
- 15.4 The Customer grants to the Company a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Company for the term of the Contract for the purpose of providing the Services to the Customer.
- 15.5 Where Software supplied is Third Party Software, the Company shall supply or otherwise make available to the Customer a copy of the Third Party Software Licence on request from the Customer, whether by means of the Third Party Software Vendor's website or otherwise. In supplying any such Third Party Software Licence, the Company shall be permitted to redact such information contained in the Third Party Software Licence as it deems reasonably necessary to protect its confidential information. The Customer shall be responsible for ensuring that the Customer's use of the Third Party Software is properly licensed.
- 15.6 The parties acknowledge that the Third Party Software Licence will (in addition and without prejudice to any terms relating to the Third Party Software set out in the Order) stipulate the Customer's rights to use the Third Party Software, and the restrictions on the Customer's use of the Third Party Software.
- 15.7 The Customer must abide by the terms of the Third Party Software Licence and any terms relating to the Third Party Software set out in the Order and ensure that all persons using the Third Party Software supplied (or otherwise made available) by the Company to the Customer abide by the terms of the Third Party Software Licence.
- 15.8 The parties acknowledge that the Third Party Software Licence creates rights and obligations between the Customer and the Third Party Software Vendor, and that the Company is not a party to the Third Party Software Licence.
- 15.9 The Company shall as far as it is able pass on to the Customer the benefits of any Third Party Software Vendor warranties in relation to any Third Party Software. The Company gives no warranties or guarantees and makes no representations concerning the Third Party Software, and all such warranties, guarantees, representations, and all conditions and any other terms whatsoever implied by statute or otherwise, are hereby excluded from the Contract between the Company and the Customer to the fullest extent permitted by applicable law.
- 16 CONFIDENTIALITY**
- 16.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party[or of any member of the group of companies to which the other party belongs, except as permitted by clause 16.2.
- 16.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 16; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 17 TERMINATION**
- 17.1 If there shall be an Intervening Event, the Company may within a reasonable time thereafter, defer or cancel any further provision of Services, stop any Goods in transit and treat the Contract as terminated but without prejudice to its rights to the full purchase price for Services rendered or Goods supplied (which shall become

- immediately due) and damages for any loss suffered in consequence of such termination.
- 17.2 Should the Company be delayed in or prevented from delivering the Goods and/or Services due to a failure of the Company's (or any of its sub-contractors') computerised business or manufacturing systems or due to any cause beyond the reasonable control of the Company, the Company shall be at liberty to terminate the Order without incurring any liability for any loss or damage arising from such termination (but without prejudice in any such case to rights accrued to the Company in respect of deliveries already made).
- 17.3 Cancellation by the Customer will only be accepted at the discretion of the Company and in any case on condition that any costs or expenses incurred by the Company up to the date of cancellation and all loss or damage resulting in the Company by reason of such cancellation will be paid by the Customer to the Company forthwith. Acceptance of such cancellation will only be binding on the Company if in writing and signed by a director of the Company.
- 17.4 Any costs or expenses incurred by the Company due to suspension or deferment of any Order by the Customer or in the event that the Customer defaults in collecting, or giving instructions for the delivery of any Goods or the performance of any Services will be payable by the Customer forthwith on demand.
- 17.5 Without prejudice to the Company's other rights under this clause 17, the Company shall be entitled to suspend the Contract for a period of up to 60 (sixty) days in the event an Intervening Event occurs. If the period of suspension reaches 60 (sixty) days, the Company shall either end the suspension or terminate the Contract.

18 CONSEQUENCES OF TERMINATION

- 18.1 On termination of the Contract, the Customer shall:
- immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
 - the Customer shall return all of the Company's materials, equipment, documents and other property and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Company 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 this Contract.
- 18.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 18.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

19 FORCE MAJEURE

- 19.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.
- 19.2 Provided it has complied with clause 19.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 19.3 The Affected Party shall:
- as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
 - use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 19.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 2 (two) weeks, the party not affected by the Force Majeure Event may terminate the Contract by giving 1 (one) week's written notice to the Affected Party.

20 GENERAL

20.1 Assignment and other dealings

- The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in

any manner any or all of its obligations under the Contract to any third party.

- The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

20.2 Notices

- Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier.
- A notice or other communication shall be deemed to have been received: if delivered personally, when left at the registered address of the parties; 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 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- The provisions of this clause 20.2 shall not apply to the service of any proceedings or other documents in any legal action.

20.3 Severance

If any provision of these Standard Terms (or of any other conditions or other terms that may be agreed in writing between the Company and the Customer) is or becomes illegal, void or unenforceable for any reason:

- that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected;
- if any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

20.4 Waiver

Failure by the Company to enforce strict compliance with these Standard Terms by the Customer will not constitute a waiver of any of the provisions of these Standard Terms.

20.5 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.

20.6 Entire agreement

The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

20.7 Third party rights

A person who is not a party to the Contract shall not have any rights under or in connection with it, save that the Contract shall be for the benefit and enforceable by any Group Company.

20.8 Variation

Except as set out in these Standard Terms, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

20.9 Governing law and jurisdiction

- 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.
- 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.