

McCulloch Group (McCulloch Group Holdings Ltd) Standard Conditions of Contract for the Purchase of Goods

1 Definitions and interpretation

1.1 Definitions

In this Contract, unless the context requires the contrary:

Applicable Laws means all applicable Laws including but not limited to: Laws relating to environmental standards, packing, packaging, marking, storage, handling, product safety, health and safety, the provision or receipt of the Good, the Modern Slavery Act 2015, and the Data Protection Legislation.

Business Day means a day, excluding a Saturday or a Sunday, on which banks in London are open for non-automated business.

CFA has the meaning given in Clause 16.1 (*Duties relating to corruption, bribery and financial crime*).

Conditions means the terms and conditions set out in this document as amended from time to time in accordance with Clause 19 (*Variation*).

Confidential Information means:

- (a) all confidential information and data which is acquired from or made available (directly or indirectly) by the Disclosing Party, or by any member of the Disclosing Party's Group or the Disclosing Party's Representatives, including but not limited to any information or document relating to the Disclosing Party's (or any of its Group's) business, operations, processes, initiatives, plans, product information, pricing information, technical or commercial know-how, trade secrets, specifications, inventions, designs, software, market opportunities, customers or suppliers (whether relating to this Contract or otherwise), either orally, in writing, or in whatever form obtained or maintained;
- (b) any information or analysis derived from the Confidential Information;
- (c) anything marked as confidential and any other information notified by or on behalf of the Disclosing Party (or any member of its Group or its Representatives) to the Receiving Party (or any member of its Group) as being confidential;
- (d) the existence and terms of this Contract or discussions and negotiations in relation to it, and of any subsequent agreement entered into in relation to this Contract; and
- (e) any copy of any of the information described in paragraph (a), (b), (c) or (d) above, which shall be deemed to become Confidential Information when it is made. For the purposes of this definition, a copy shall include, without limitation, any notes or recordings of the information described in paragraph (a), (b), (c) or (d) above (howsoever made).

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

Customer Premises means those premises or land on which Customer conducts its business, whether owned by Customer or not, and where the Goods are to be delivered.

Data Protection Legislation means, for the periods in which they are in force, the Data Protection Act 2018, the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), the GDPR (as defined below) and all applicable Laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or other relevant Supervisory Authorities, in each case as amended or substituted from time to time.

Delivery Location has the meaning given in Clause 6.1 (*Delivery*).

Disclosing Party means a Party that makes a disclosure of Confidential Information to another Party.

Dispute means any dispute, conflict or disagreement arising out of or in connection with this Contract.

Force Majeure Event means any event beyond the reasonable control of a Party (the **Affected Party**) and which is unavoidable including, but not limited to, the following events: epidemics, earthquakes, landslides or displacements of other materials, storms, floods, hurricanes, tempest, acts of God, state or public enemy, wars, revolutions, uprisings, hostilities, civil disturbances, blockades, embargoes, government restraints or similar disruptions or interferences with trade, riots, civil war, insurrection, invasion, explosions and fires.

GDPR means:

- (a) the General Data Protection Regulations (Regulation (EU) 2016/679) which came into force on 25 May 2018; or
- (b) any equivalent legislation amending or replacing the General Data Protection Regulations (Regulation (EU) 2016/679).

Goods means any goods, including packaging, from time to time supplied or agreed to be supplied to Customer by Supplier, including those supplied by way of trial or sample.

Group means a Party, its parent undertaking and the subsidiary undertakings of its parent undertaking and its associated companies.

Insolvency Event means:

- (a) the relevant Party proposing, (or any other steps taken or negotiations commenced by that Party or any of its creditors with a view to proposing) any kind of scheme, restructuring plan, reconstruction, composition, compromise or arrangement with any of its creditors or classes of them; or
- (b) the relevant Party is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "*it is proved to the satisfaction of the Court*" do not appear in sub-sections 123(1)(e) and section 123(2); or
- (c) the relevant Party calling a meeting for the purpose of passing a resolution to wind up that Party, or the passing of such a resolution; or
- (d) the relevant Party takes any step towards the Party obtaining a moratorium or other protection from its creditors; or
- (e) the relevant Party presenting, or having presented, a petition for a winding-up order and such petition is not withdrawn or dismissed within five Business Days of presentation and before it is advertised, or an order is made or proceedings are commenced for the winding-up or dissolution of the relevant Party; or
- (f) an application to appoint an administrator being made in respect of the relevant Party or a notice of intention to appoint an administrator or a notice of appointment of an administrator being filed in respect of the relevant Party; or

- (g) the relevant Party having an administrator, administrative receiver, receiver, receiver and manager, supervisor, monitor, provisional liquidator or liquidator appointed in respect of the relevant Party or any of its assets; or the relevant Party stopping or suspending making payments (whether of principal or interest) with respect to all or any classes of its debts or announcing an intention to do so or the relevant Party suspending or ceasing or threatening to suspend or cease to carry on its business; or
- (h) the amalgamation, reconstruction, reorganisation, dissolution, liquidation, merger or consolidation of the relevant Party; or
- (i) anyone takes steps to expropriate, sequester, attach to, take possession of, seize or levy a distress or execution on, exercise a right of forfeiture or repossession over or enforce security over, that relevant Party's property or assets in any amount which materially affects the assets of that Party; and/or
- (j) any equivalent or analogous procedure under the Law of any jurisdiction.

Intellectual Property Right means any right, title or interest in patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks, trade names 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, semiconductor topography rights, 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.

Law means all statute, subordinate legislation, bye law, regulation, order, or applicable judgment of a relevant court of law.

Notice has the meaning given in Clause 24.1 (*Notices to parties*).

Order means the Customer's order for the Goods, as set out in the Customer's purchase order form or in the Customer's written acceptance of the Supplier's quotation (as the case may be).

Party means a party to the Contract.

Personal Data means all personal data (as defined by the Data Protection Legislation) in whatever form or medium which is:

- (a) disclosed, supplied, or in respect of which access is granted, to Supplier (or to any Other Processor) whether by, or on behalf of, Customer or otherwise in connection with the Contract; or
- (b) produced or generated by or on behalf of Supplier (or any Other Processor) in connection with the Contract.

Receiving Party means a Party to which a disclosure of Confidential Information is made by another Party.

Representative means a Party's employees, officers, agents, representatives or advisers.

Supplier means McCulloch Group Holdings Ltd (or any of its trading entities) registered in Scotland, company number SC470531 whose registered office is at Craigmains 10a Main Street, Ballantrae, Girvan, KA26 0NB.

Tax Authority means any taxing or other authority competent to impose any liability in respect of taxation or responsible for the administration and/or collection of taxation or enforcement of any Law in relation to taxation.

Warranty Period has the meaning given in Clause 7.1

1.2 Interpretation

Unless a contrary indication appears, any reference in this Contract to:

- (a) clause headings are for ease of reference only and do not form part of or affect the meaning, interpretation or construction of this Contract;
- (b) any Law shall be construed to include a reference to that Law as from time to time amended, extended, re-enacted or consolidated and any subordinate legislation made pursuant to that Law;
- (c) Clauses are to clauses of this Contract; and a reference to a clause or paragraph number is, unless otherwise specified, a reference to all its sub-clauses or sub-paragraphs;
- (d) the words "other", "includes", "including" and "in particular" do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible; and
- (e) a "holding company" or a "subsidiary" means (as the case may be) as defined in section 1159 of the Companies Act 2006.

2 Basis of contract

- 2.1 These 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 law, trade custom, practice or course of dealing. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.2 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.3 A quotation for the Goods given by the Supplier shall not constitute an offer.

3 Supply of goods

- 3.1 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 3.2 Supplier shall supply and Customer shall purchase the Goods specified in the Order.
- 3.3 The Supplier reserves the right to amend the Goods if required by any Law, and the Supplier shall notify the Customer in any such event.

4 Supplier's obligations

- 4.1 Supplier shall:
 - (a) ensure that the Goods are supplied in all material respects in accordance with their description and the Order; and
 - (b) supply the Goods in accordance with all Applicable Laws.

5 Customer's obligations

- 5.1 The Customer shall:

- (a) ensure that the terms of the Order and any other information it provides are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Goods;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;

6 Delivery

- 6.1 Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing (**Delivery Location**).
- 6.2 Customer grants Supplier permission to use that part of Customer Premises as may be from time to time designated for the purposes of delivering the Goods to Customer.
- 6.3 Delivery of the Goods shall be complete on completion of unloading of the Goods at the Delivery Location.
- 6.4 Supplier shall use reasonable endeavours to meet any delivery dates specified in an Order, but any such dates shall be estimates only and time shall not be of the essence for performance of an Order.
- 6.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 6.6 The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 6.7 If 5 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken actual delivery of them (other to the extent that the Supplier is the direct root cause of such failure), the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 6.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

7 Quality

- 7.1 The Supplier warrants that on delivery, and for a period of twelve (12) months from the date of delivery (**Warranty Period**), the Goods shall:
 - (a) be free from material defects in design and
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);
 - (c) be fit for any purpose held out by the Supplier; and
 - (d) be free from material defects in materials and workmanship.
- 7.2 Subject to Clause 7.3, if:

- (a) the Customer gives notice in writing to the Supplier immediately upon discovery that some or all of the Goods do not comply with the warranty set out in Clause 7.1; and
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

7.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in Clause 7.1 if:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with Clause 7.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (e) the Goods differ from their description or the Order as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

7.4 Except as provided in this Clause 7, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Clause 7.1.

7.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

7.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

8 Title and risk

8.1 The risk in the Goods shall pass to the Customer on completion of delivery.

8.2 Title to any Goods relating to a particular Order shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for all of the Goods relating to that Order.

8.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to Insolvency Event; and

- (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - i. the Goods; and
 - ii. the ongoing financial position of the Customer.

9 Warranties and representations

9.1 Authority warranty and representation

Each Party warrants and represents that it shall have full power and authority to enter into, and perform, this Contract and it has (and shall have) undertaken all requisite corporate and other actions to approve the signature and performance of this Contract.

10 Charges and payment

- 10.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 10.2 Other than to the extent expressly provided in any given Order the Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
 - (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 10.3 The price of the Goods:
 - (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 10.4 The Supplier shall invoice the Customer:
 - (a) in advance of delivery, seventy-five percent (75%) of the price of the Goods relating to the relevant Order;
 - (b) on or at any time after the completion of delivery, the remaining sums due for that particular Order.
- 10.5 The Customer shall pay each invoice submitted by the Supplier:
 - (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
 - (c) time for payment shall be of the essence of the Contract.

10.6 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 Clause 15, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 10.6 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.

10.7 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).

11 Limitation of liability

11.1 Insurance

The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess liability.

11.2 Supplier's total liability

Subject to Clause 11.5 (*No limit or exclusions*) and Clause 11.3 (*Exclusions*), Supplier's total liability to Customer arising out of or in connection with this Contract, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, shall be the price paid or payable by the Customer for the Goods under the Contract.

11.3 Exclusions

Subject to Clause 11.5 (*No limit or exclusions*), the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

11.4 This Clause 11 shall survive termination of the Contract.

11.5 No limit or exclusions

Nothing in this Contract excludes or limits the liability of either Party in respect of:

- (a) any liability arising as a result of fraud (and/or fraudulent misrepresentation), bribery or corruption;
- (b) death or personal injury caused by its negligence (including negligence of its employees, agents or contractors);
- (c) any breach of terms regarding title implied by section 12 of the Sale of Goods Act 1979; and
- (d) liability which may not otherwise be limited or excluded under Applicable Laws.

12 Confidentiality

- 12.1 Each Party shall safeguard the other Party's Confidential Information as it would its own confidential information, and shall use, copy and disclose that Confidential Information only in connection with the proper performance of the Contract.
- 12.2 Nothing in the Contract shall be construed so as to prevent one Party from disclosing the other's Confidential Information where required to do so by a court or other competent authority, provided that, unless prevented by law, the first Party promptly notifies the other Party in advance and discloses only that part of the other Party's Confidential Information that it is compelled to disclose.
- 12.3 Each Party shall tell the other immediately if it discovers that this Clause 12 has been breached and shall, on request, return to the other all of the other Party's Confidential Information which is in a physical form and destroy any other records containing Confidential Information.

12.4 Duration of obligations

The obligations in this Clause 12 shall continue without limit in time.

13 Intellectual property rights

- 13.1 The parties acknowledge that there shall be no change as a result of the Contract in the ownership of Intellectual Property Rights in any material or items existing prior to the Contract, nor does the Contract assign any Intellectual Property Rights which are created or developed by or on behalf of either Party outside the Contract or where such assignment is not expressly provided for in the Contract.

14 Data protection

- 14.1 Each Party shall comply fully with all Applicable Laws relating to data protection with regard to the activities which are the subject of the Contract and shall not knowingly do anything or permit anything to be done which might lead to a breach by the other of any Data Protection Legislation.
- 14.2 Each Party shall have in place and shall maintain appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

15 Termination

15.1 Supplier's rights of termination for cause

Without limiting its other rights and remedies, Supplier may terminate this Contract on written notice to Customer, in the following situations:

- (a) immediately if Customer fails to pay any amount due under the Contract on the due date for payment;
- (b) in the case of a material breach (other than a failure by the Customer to pay any amount due) capable of remedy, if Customer fails to remedy that breach within 21 days from the date of a notice requiring it to be remedied;
- (c) immediately if Customer commits any material breach which is not capable of remedy;
- (d) immediately if Customer breaches any part of:
 - (i) Clause 12 (*Confidentiality*);
 - (ii) Clause 13.1 (*Data protection*);

- (iii) Clause 16 (*Corruption, bribery and financial crime*); or
- (e) immediately if Customer's total liability to Supplier arising out of or in connection with this Contract, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, exceeds the limits set out in Clause 11.1 (*Supplier's total liability*); or
- (f) on 10 days' written notice in the circumstances set out in Clause 17.5 (*Right of termination for force majeure*); or
- (g) on 10 days' written notice if Customer does, or omits to do, something which will cause material adverse publicity about Supplier or will weaken the public image and reputation of Supplier.

Termination for insolvency

- 15.2 Either Party may by written notice to the other terminate this Contract immediately if the other Party is subject to an Insolvency Event.
- 15.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to an Insolvency Event, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

Consequences of Termination

- 15.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of 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.
- 15.5 Save as otherwise expressly provided in this Contract, termination or expiry for any reason shall not affect any rights or liabilities that have accrued prior to such termination or expiry or the coming into force or continuance in force of any term that is expressly or by implication intended to come into or continue in force on or after termination or expiry.

16 Corruption, bribery and financial crime

16.1 Duties relating to corruption, bribery and financial crime

Each Party shall:

- (a) at all times comply with all Applicable Laws and sanctions relating to anti-bribery, corruption and financial crime including but not limited to the Bribery Act 2010 (**Bribery Act**) and the Criminal Finances Act 2017 (**CFA**);
- (b) not engage in any activity, practice or conduct which would constitute an offence by it under the Bribery Act or the CFA; and
- (c) keep at its main place of business detailed, accurate and up-to-date records and books of account that are sufficient to enable the verification of each Party's compliance with its obligations which can be accessed by the other Party and third party representatives on reasonable notice during normal business hours.

16.2 Right of termination for corruption, bribery and financial crime

Any breach by either Party of Clauses 16.1(a) or (b) (*Duties relating to corruption, bribery and financial crime*) shall be considered a material breach not capable of remedy for the purposes of Clause 15 (*Termination*).

17 Force majeure

17.1 No liability for force majeure

Neither Party shall in any circumstances be liable to the other for any delay or non-performance of its obligations under this Contract to the extent that such delay or non-performance is due to a Force Majeure Event.

17.2 No force majeure

The following shall be deemed not to constitute or give rise to a Force Majeure Event:

- (a) strikes, lockouts and shutdowns solely affecting the Affected Party (or of any person engaged by any of them);
- (b) shortage of labour, materials or other resources;
- (c) any act, event, omission, happening or non-happening attributable to the wilful act, neglect or failure to take reasonable precautions of the Affected Party, its servants, agents or employees and, for these purposes, any failure to properly train employees or put in place any infrastructure, other than where such failure was itself due to a Force Majeure Event.

17.3 Suspension of obligations due to force majeure

Subject to Clause 17.5 (*Right of termination for force majeure*), the date for performance of any affected obligations will be suspended for a period equal to the delay caused by the Force Majeure Event.

17.4 Obligations in the event of force majeure

If a Party is delayed in or prevented from performing its obligations under this Contract by a Force Majeure Event, such Party shall:

- (a) give notice in writing of such delay or prevention to the other Party specifying the nature and extent of the Force Majeure Event immediately on becoming aware of it; and
- (b) take all necessary steps to prevent or, as appropriate, to remedy the failure or delay, to mitigate the effects of the Force Majeure Event and, where applicable, to resume performance of its obligations as soon as it is reasonably able to do so.

17.5 Right of termination for force majeure

If the Force Majeure Event continues for a period of 30 days or more following notification, the Party not affected by the Force Majeure Event may terminate this Contract by giving not less than 10 days' prior written notice to the Affected Party.

17.6 No liability

Neither Party shall in any circumstances be liable to the other for any delay or non-performance of its obligations under this Contract to the extent that such delay or non-performance is due to a Force Majeure Event.

17.7 End of force majeure event

The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes (or may cause, as the case may be) the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall where this is possible continue to be performed on the terms existing

immediately prior to the occurrence of the Force Majeure Event and where this is not possible the Parties shall amend this Contract in accordance with Clause 19 (*Variation*).

18 Cumulative rights

The rights and remedies of the Parties in connection with this Contract are cumulative and, except as expressly stated in this Contract, are not exclusive of any other rights or remedies provided by this Contract, of Law, equity or otherwise.

19 Variation

Any variation to this Contract shall be effective only if it is in writing and signed by the Parties or their duly authorised representatives.

20 Assignment and transfer

20.1 Prohibition on assignment without prior written consent

- (a) The Supplier may at any time assign, transfer, grant any security interest, dispose of or hold on trust or otherwise deal with any of its rights and obligations arising under or in connection with this Contract.
- (b) The Customer may not assign, transfer, grant any security interest, dispose of or hold on trust or otherwise deal with any of its rights and obligations arising under or in connection with this Contract without the prior written consent of the Supplier.

21 Third party rights

21.1 Rights of third parties

The Parties do not intend any third party to have the right to enforce any provision of this Contract under the Contracts (Rights of Third Parties) Act 1999 or otherwise, except where such third party is an assignee of rights under this Contract and such assignment is in accordance with Clause 20 (*Assignment and transfer*).

21.2 Right to terminate or vary

The Parties may terminate or vary this Contract without the consent of any third party.

22 Waiver

No failure or delay by a Party to exercise any right or remedy provided under this Contract or by Law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy. No waiver in connection with this Contract shall be effective unless it is in writing and duly signed, refers expressly to this Clause, and is communicated to the other Party in accordance with Clause 24 (*Notices*). An effective waiver shall not be deemed a waiver of any right or remedy in respect of any subsequent breach or default.

23 Severability

If any provision or part-provision of this Contract is or becomes illegal, invalid or unenforceable, the provision will apply with whatever minimum level of deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the Parties' commercial intention. Any modification to or deletion of a provision or part-provision under this Clause 23 shall not affect the validity and enforceability of the rest of this Contract.

24 Notices

24.1 Notices to parties

Any notice or communication given to a Party under or in connection with this Contract (**Notice**) shall be sent for the attention of the contacts given in the Order.

24.2 Form of notices

All Notices shall be in writing, in English and shall be delivered by hand or sent by pre-paid registered post or equivalent (or courier using an internationally registered courier company if sent abroad) or by email (provided that any notice sent by email is confirmed by sending a copy of the notice by pre-paid first class or registered post).

24.3 Deemed delivery

Without evidence of earlier receipt, communications complying with Clause 24.1 (*Notices to parties*) are deemed received:

- (a) if delivered by hand, at the time of delivery;
- (b) if sent by email shall be deemed to have been delivered (unless notification of delivery failure or an out of office auto notification is received) on the Business Day it was transmitted, if sent before 5pm, or the following Business Day if sent after 5pm; or
- (c) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second, or (if sent by airmail) fifth, Business Day after posting

25 Entire agreement

- 25.1 The Contract sets out the entire agreement between the Parties, and replaces all previous proposals and prior written or oral agreements or understandings between the Parties, relating to its subject matter.
- 25.2 Each Party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

26 No partnership or agency

Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

27 Dispute resolution

The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any Dispute.

27.1 Determination of disputes

If a Dispute arises between Customer and Supplier in relation to any matter which cannot be resolved by local operational management then either Party may refer the matter to the courts in accordance with Clause 28 (*Governing law and jurisdiction*).

27.2 Specific performance, interlocutory or injunctive relief

Neither Party shall be prevented from, or delayed in, seeking orders for specific performance or interlocutory or final injunctive relief on an ex parte basis or otherwise as a result of the terms of this Clause 27, such clause not applying in respect of any circumstances where such remedies are sought.

28 Service of Process – Relevant to sales outside the United Kingdom of Great Britain

- 28.1 The Customer irrevocably appoints the solicitors or other persons in Scotland detailed in Clause 28.2 as their agents to accept on their behalf service of all process and other documents of whatever description to be served on the Customer in connection with any

litigation or arbitration within the Scottish jurisdiction arising out of or relating to this Agreement or any issue connected therewith.

28.2 The Customer appoints the following individuals to act as their agents to accept on their behalf service of all process and other documents of whatever description:

- (a) *Dentons UK and Middle East LLP*, First Floor 9 Haymarket Square,
Edinburgh, EH3 8RY - + 4433 0222 0050

29 Governing law and jurisdiction

29.1 Governing law

This Contract and any non-contractual disputes or claims arising out of or in connection with it are governed by and shall be interpreted in accordance with Scottish law.

29.2 Jurisdiction

Subject to the provisions of Clause 27 (*Dispute resolution*), the Parties agree that the courts of Scotland shall have exclusive jurisdiction to hear and settle any action, suit, proceeding, claim or dispute (whether contractual or non-contractual) arising out of or in connection with this Contract and irrevocably submit to the jurisdiction of those courts.