

## MBA ENGINEERING SYSTEMS LIMITED

### SUPPLY OF MACHINERY AND SERVICES

These are the terms and conditions on which MBA Engineering Systems Limited (the Supplier) will do business with the Customer. Please read them carefully, particularly clause 12 (which limits the Supplier's liability).

#### 1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions (**Conditions**).
- Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
- Commencement Date:** has the meaning set out in clause 2.2.
- Completion Date:** the date of delivery of the Machinery, or the date that the installation of the Machinery is complete and signed off by the Supplier and Customer in writing (whichever is the later).
- Conditions:** these terms and conditions as amended from time to time in accordance with clause 15.7.
- Contract:** the contract between the Supplier and the Customer for the supply of Machinery and/or Services in accordance with these Conditions.
- Consumables:** items and parts that are capable of being destroyed, dissipated, wasted, or used, in relation to the Machinery.
- Customer:** the person or firm who purchases the Machinery and/or Services from the Supplier.
- Deliverables:** the deliverables set out in the Order.
- Delivery Location:** has the meaning set out in clause 4.1
- Deposit:** the deposit paid by the Customer as set out in the Project Plan.
- Force Majeure Event:** has the meaning given to it in clause 14.
- Specification:** any specification for the Machinery, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.
- Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- Machinery:** the machinery, equipment, apparatus, products and materials agreed to be supplied by the Supplier as set out in the Project Plan (including any part or parts of them).
- Order:** the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.
- Project Plan:** the detailed plan describing the Project and setting out the estimated timetable and responsibilities for the provision of the Machinery and Services as set out in Schedule 1.
- Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Project Plan.
- Supplier:** MBA Engineering Systems Limited, a company registered in England and Wales with company number: 07117946 whose registered office is at Unit A Manor Farm, Moorhouse Lane, North Kilvington, Thirsk. YO7 4AF

- 1.2 **Construction.** In these Conditions, the following rules apply:
- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - (b) a reference to a party includes its personal representatives, successors or permitted assigns;
  - (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
  - (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
  - (e) a reference to **writing** or **written** includes faxes and e-mails.
  - (f) Clause, schedule and paragraph headings shall not affect the interpretation of these Conditions.
  - (g) The schedules form part of the Contract and shall have effect as if set out in full in the body of these Conditions and any reference to the Contract includes the schedules.
  - (h) Words in the singular shall include the plural and vice versa.

#### 2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Machinery and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Machinery or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Machinery described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 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 trade, custom, practice or course of dealing.
- 2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

#### 3. MACHINERY

- 3.1 The Machinery is described in the Specification.
- 3.2 To the extent that the Machinery is to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss

of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

#### 4. DELIVERY

4.1 The Supplier shall deliver the Machinery to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Machinery is ready.

4.2 Delivery of the Machinery shall be completed on the Machinery's arrival at the Delivery Location.

4.3 Any dates quoted for delivery of the Machinery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Machinery that 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 Machinery.

4.4 The Supplier shall have no liability for any failure to deliver the Machinery to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Supplier with adequate delivery instructions for the Machinery or any relevant instruction related to the supply of the Machinery.

4.5 If the Customer fails to accept or take delivery of the Machinery within 10 Business Days of the Supplier notifying the Customer that the Machinery is ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Machinery:

(a) delivery of the Machinery shall be deemed to have been completed at 9.00 am on the 11<sup>th</sup> Business Day following the day on which the Supplier notified the Customer that the Machinery were ready; and

(b) the Supplier shall store the Machinery until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.6 If 20 Business Days after the Supplier notified the Customer that the Machinery was ready for delivery the Customer has not accepted delivery of it, the Supplier may resell or otherwise dispose of part or all of the Machinery and, after deducting the Deposit paid, reasonable storage and selling costs, account to the Customer for any excess over the price of the Machinery, or charge the Customer for any shortfall below the price of the Machinery.

#### 5. QUALITY

5.1 The Supplier warrants that on the Completion Date, and for a period specified in the project plan (**Warranty Period**), the Machinery (excluding any Consumables) shall:

(a) conform in all material respects with their description and any applicable Specification;

(b) be free from material defects in design, material and workmanship;

(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

(d) be fit for any purpose held out by the Supplier.

5.2 Subject to clause 5.3, if:

(a) the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Machinery does not comply with the warranty set out in clause 5.1;

(b) the Supplier is given a reasonable opportunity of examining such Machinery; and

(c) the Customer (if asked to do so by the Supplier) returns such Machinery to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Machinery.

5.3 The Supplier shall not be liable for the Machinery' failure to comply with the warranty in clause 5.1 if:

(a) the Customer makes any further use of such Machinery after giving a notice in accordance with clause 5.2;

(b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Machinery or (if there are none) good trade practice;

(c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;

(d) the Customer alters or repairs such Machinery without the written consent of the Supplier;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;

(f) the Machinery differs from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards;

(g) the Customer fails to comply with the requirements of clause 5.4 below; or

(h) the defect arises as a result of Consumables.

5.4 During the Warranty Period the Customer shall:

(a) ensure that the Machinery is kept and operated in a suitable environment, which shall as a minimum meet the requirements set out in the operating instructions, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;

(b) take such steps (including compliance with all safety and usage instructions provided by the Supplier) as may be necessary to ensure, so far as is reasonably practicable, that the Machinery is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;

(c) maintain at its own expense the Machinery in good and substantial repair in order to keep it in as good an operating condition as it was on the Completion Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts and Consumables, and shall make good any damage to the Machinery;

(d) make no alteration to the Machinery and shall not remove any existing component(s) from the Machinery without the prior written consent of the Supplier, unless carried out to comply with any mandatory modifications required by law or any regulatory authority or unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a

- similar make and model or an improved/advanced version of it.
- (e) keep the Supplier fully informed of all material matters relating to the Machinery;
  - (f) keep the Machinery at all times at the Site and shall not move or attempt to move any part of the Machinery to any other location without the Supplier's prior written consent;
  - (g) permit the Supplier or its duly authorised representative to inspect the Machinery at all reasonable times and for such purpose to enter upon the Site or any premises at which the Machinery may be located, and shall grant reasonable access and facilities for such inspection; or
  - (h) maintain operating and maintenance records of the Machinery and make copies of such records readily available to the Supplier, together with such additional information as the Supplier may reasonably require.
- 5.5 After the Warranty Period, if the Customer requires the Supplier to supply Services or any further work to be done, this shall be charged at the Supplier's standard hourly rates. The Customer also has the option to enter into a separate Maintenance Contract with the Supplier.
- 5.6 The Customer acknowledges that the Supplier shall not be responsible for any loss of or damage to the Machinery arising out of or in connection with any negligence, misuse, mishandling of the Machinery or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer undertakes to indemnify the Supplier on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with the terms of this agreement.
- 5.6 Except as provided in this clause 5 the Supplier shall have no liability to the Customer in respect of the Machinery' failure to comply with the warranty set out in clause 5.1.
- 5.7 The terms of these Conditions shall apply to any repaired or replacement Machinery supplied by the Supplier under clause 5.2.
- 6. TITLE AND RISK**
- 6.1 The risk in the Machinery shall pass to the Customer on completion of delivery.
- 6.2 Title to the Machinery shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Machinery, and any other goods that the Supplier has supplied to the Customer, in respect of which payment has become due.
- 6.3 Until title to the Machinery has passed to the Customer, the Customer shall:
- (a) store the Machinery and ensure 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 Machinery;
  - (c) maintain the Machinery in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
  - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(m); and
  - (e) give the Supplier such information relating to the Machinery as the Supplier may require from time to time;
  - (f) not sell or resell the Machinery until payment has been made to the Supplier in full.
- 6.4 The Supplier may at any time:

- (a) require the Customer to deliver up all Machinery in its possession; and
  - (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Machinery are stored in order to recover them.
- 6.5 The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Machinery are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 6.6 On termination of the Contract, howsoever caused, the Supplier's (but not the Customer's) rights contained in this clause 6 shall remain in effect.

## **7. SUPPLY OF SERVICES**

- 7.1 The Supplier shall provide the Services to the Customer in accordance with the Project Plan in all material respects.
- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Project Plan, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

### **Installation**

- 7.5 Where the Supplier agrees to install the Machinery at the Customer's site, the Customer shall procure that a duly authorised representative of the Customer shall be present at the installation of the Machinery. Acceptance by such representative of installation shall constitute conclusive evidence that the Customer has examined the Machinery and has found them to be in good condition, complete and fit in every way for the purpose for which it is intended (save as regards any latent defects not reasonably apparent on inspection). If required by the Supplier, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.
- 7.6 To facilitate delivery and installation, the Customer shall provide all requisite materials, facilities, access and suitable working conditions to enable delivery and installation to be carried out safely and expeditiously including the materials, facilities, access and working conditions specified in the Project Plan.
- 7.7 If after completion of the installation the Customer requires the Machinery to be moved, or taken to other premises the Supplier will assist with this, subject to the Supplier's additional costs and expenses being agreed and paid by the Customer.

## **8. CUSTOMER'S OBLIGATIONS**

- 8.1 The Customer shall:
- (a) ensure that the terms of the Order and (if submitted by the Customer) the Specification are complete and accurate;
  - (b) co-operate with the Supplier in all matters relating to the Services;
  - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, and other facilities as reasonably required by the Supplier to provide the Services;

<p>(d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;</p> <p>(e) prepare the Customer's premises for the supply of the Services;</p> <p>(f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;</p> <p>(g) keep and maintain all materials, goods, equipment, tools, parts, documents and other property of the Supplier (<b>Supplier Materials</b>) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and</p> <p>(h) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises.</p>	<p>8.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (<b>Customer Default</b>):</p> <p>(a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;</p> <p>(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8; and</p> <p>(c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.</p>	<p><b>9. CHARGES AND PAYMENT</b></p> <p>9.1 The price for Machinery and Services shall be the price set out in the Project Plan. The price of the Machinery is inclusive of all costs and charges of packaging, insurance, and transport of the Machinery to the Delivery Location.</p> <p>9.2 Where the charges for Services are charged on a time and materials basis:</p> <p>(a) the charges shall be calculated in accordance with the Supplier's standard daily fee rates, as provided to the Customer from time to time;</p> <p>(b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;</p> <p>(c) the Supplier shall be entitled to charge an overtime rate of 150% per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2(b); and</p> <p>(d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and</p>	<p>required by the Supplier for the performance of the Services, and for the cost of any materials.</p> <p>9.3 The Supplier reserves the right to:</p> <p>(a) increase its standard daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period; and</p> <p>(b) increase the price of the Machinery, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Machinery to the Supplier that is due to:</p> <p>(i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);</p> <p>(ii) any request by the Customer to change the delivery date(s), quantities or types of Machinery ordered, or the Specification; or</p> <p>(iii) any delay caused by any instructions of the Customer in respect of the Machinery or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Machinery.</p> <p>9.4 The Supplier shall invoice the Customer on the dates specified in the Project Plan (including any instalment payment dates).</p> <p>9.5 The Deposit is expressly acknowledged by the Customer to be non-refundable in event of:</p> <p>(a) termination of the Contract due to the Customer's breach;</p> <p>(b) the Customer's failure to pay all sums due in accordance with clause 9.6 below;</p> <p>(c) the Customer cancels the order for the Machinery.</p> <p>9.6 The Customer shall pay each invoice submitted by the Supplier:</p> <p>(a) within 30 days of the date of the invoice; and</p> <p>(b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and</p> <p>(c) time for payment shall be of the essence of the Contract.</p> <p>9.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (<b>VAT</b>). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Machinery at the same time as payment is due for the supply of the Services or Machinery.</p> <p>9.8 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum HSBC Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.</p> <p>9.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.</p> <p>9.10 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This clause 9.10 is without prejudice to</p>
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any right to claim for interest under the law, or any such right under the Contract.

## **10. INTELLECTUAL PROPERTY**

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 10.3 All Supplier Materials are the exclusive property of the Supplier.

## **11. CONFIDENTIALITY**

- 11.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 11.2 This clause 11 shall survive termination of the Contract.

## **12. LIMITATION OF LIABILITY CHARGES AND PAYMENT**

- 12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Machinery and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Machinery Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.
- 12.2 Subject to clause 12.1:
- (a) the Supplier 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, or any indirect or consequential loss arising under or in connection with the Contract ; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £1,000,000 (one million pounds).
- 12.3 The terms implied by sections 13 to 15 of the Sale of Machinery Act 1979 and the terms implied by sections 3

to 5 of the Supply of Machinery and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

- 12.4 This clause 12 shall survive termination of the Contract.

## **13. TERMINATION**

- 13.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 10 Business Days after receipt of notice in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors, other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(a) to clause 13.1(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

- (l) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 13.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 13.3 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Machinery under the Contract or any other contract between the Customer and the Supplier if:
- (a) the Customer fails to pay any amount due under this Contract on the due date for payment; or
  - (b) the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(m), or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 13.4 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
  - (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

#### 14. FORCE MAJEURE

- 14.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 14.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 14.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Machinery for more than 12 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

#### 15. GENERAL

##### 15.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, 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.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

##### 15.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with this 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, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2(a); if sent by prepaid first class post or other next working day delivery service, at 11.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

##### 15.3 Severance

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

##### 15.4 Waiver

A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further 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.

##### 15.5 No partnership or agency

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party

shall have authority to act as agent for, or to bind, the other party in any way.

**15.6 Third parties**

A person who is not a party to the Contract shall not have any rights to enforce its terms.

**15.7 Variation.**

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.

**15.8 Governing law**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**15.9 Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

## **Schedule 1 - The Project Plan**

### **Dates**

### **Services**

### **Installation**

INSERT DESCRIPTION OF THE SERVICES TO BE PROVIDED UNDER THE CONTRACT- QUOTATION AND PROJECT PLAN

### **Machinery**

INSERT DETAILS OF ANY GOODS/MACHINERY//MATERIALS SUPPLIED

### **Specification**

[Refurbished Machinery - The Machinery is second hand, and not brand new. As the Machinery has been refurbished there will be some signs of wear and tear. The Supplier will not be responsible for minor defects, or for any defects which arise outside of the Warranty Period. ]

### **Prices**

INSERT DETAILS OF PRICES

TIME AND MATERIALS

FIXED

### **Payment Dates**

### **Deposit**



The receipt of a purchase order from the Customer, the Supplier commencing the provision of Services, or a request for Services from the Customer, is deemed acceptance of the Project Plan and the attached Terms of Supply.

We acknowledge receipt of the Project Plan and the attached Terms of Supply.

**For and on behalf of the Customer**

.....  
Director/Owner/Authorised Signatory

Print Name: .....

Date:.....

**For and on behalf of MBA Engineering Systems Limited**

.....  
Director

Print Name: .....

Date:.....