

STANDARD CONDITIONS OF CONTRACT FOR THE SALE OF GOODS 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 16 (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).
- Contract:** the Customer's purchase order and the Supplier's acceptance of it, or the Customer's acceptance of a quotation for Services by the Supplier under clause 2.2.
- Customer:** the person, firm or company who purchases Services from the Supplier in accordance with this Contract.
- Customer's Equipment:** any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.
- Document:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.
- Goods:** all goods, products and materials developed and provided by the Supplier in relation to Project Plan in any form (including any part or parts of them).
- 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.
- Pre-existing Materials:** all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of the Contract
- Project:** the project as described in the Project Plan.
- Project Milestones:** a date by which a part of the Project is estimated to be completed, as set out in the Project Plan.
- Project Plan:** the detailed plan describing the Project and setting out the estimated timetable (including Project Milestones) and responsibilities for the provision of the Goods and Services agreed in accordance with clause 4 as set out in Schedule 1.
- Services:** the services to be provided by the Supplier under the Contract as set out in the Project Plan, together with any other services which the Supplier provides or agrees to provide to the Customer.
- 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
- Supplier's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.
- VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Conditions.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 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.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to writing or written includes faxes and e-mail.
- 1.8 Where the words include(s), including or in particular are used in these terms and conditions, they are deemed to have the words without limitation following them and where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.
- 1.9 Any obligation in the Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.10 References to conditions and schedules are to the conditions and schedules of the Contract.

2. APPLICATION OF CONDITIONS

- 2.1 These Conditions shall:
- (a) apply to and be incorporated into the Contract; and
 - (b) prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 The Customer's purchase order, or the Customer's acceptance of a quotation for Services by the Supplier, constitutes an offer by the Customer to purchase the Services specified in it on these Conditions. No offer placed by the Customer shall be accepted by the Supplier other than:
- (a) by a written acknowledgement issued and executed by the Supplier; or
 - (b) (if earlier) by the Supplier starting to provide the Services,
- when a contract for the supply and purchase of those Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract. Quotations are given by the Supplier on the basis that no Contract shall come into existence except in accordance with clause 2.2. Any quotation is valid for a period of 30 days from its date, provided that the Supplier has not previously withdrawn it.
- 2.3

3. COMMENCEMENT AND DURATION

- 3.1 The Services supplied under the Contract shall be provided by the Supplier to the Customer from the date of acceptance by the Supplier of the Customer's offer in accordance with clause 2.2.
- 3.2 The Services supplied under the Contract shall continue to be supplied until the Project is completed in accordance with the Project Plan.

4. PROJECT PLAN

- 4.1 The Project Plan shall be agreed in the following manner:
- (a) the Customer shall provide the Supplier with a request for a written quote, setting out the requirements and specifications of the services which it is requesting from the Supplier, including a description of what work is to be done, dates by which each stage of the work is requested to be started and finished, the Goods, and such other information as the Supplier may request to allow the Supplier to prepare a draft Project Plan;
 - (b) the Supplier shall, as soon as reasonably practicable, provide the Customer with a draft Project Plan; and
 - (c) the Supplier and the Customer shall discuss and agree the draft Project Plan and when it has been agreed, it shall become a Schedule to and subject to these Conditions.
- 4.2 Once the Project Plan has been agreed in accordance with clause 4.1(c), no amendment shall be made to it except in accordance with clause 11 and clause 19.
- 4.3 The quantity and description of the Goods shall be as set out in the Project Plan.
- 4.4 All samples, drawings, descriptive matter, specifications and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

5. DELIVERY

- 5.1 Unless otherwise agreed in writing by the Supplier, delivery of the Goods shall take place at the Supplier's place of business (the Delivery Point).
- 5.2 The Customer shall take delivery of the Goods within 14 days of the Supplier giving it notice that the Goods are ready for delivery.
- 5.3 Any dates specified by the Supplier for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 5.4 Subject to the other provisions of these conditions the Supplier shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Supplier's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 60 days.
- 5.5 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Supplier is unable to deliver the Goods on time because

the Customer has not provided appropriate instructions, documents, licences or authorisations:

- (a) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Supplier's negligence);
 - (b) the Goods shall be deemed to have been delivered; and
 - (c) the Supplier may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 5.6 The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.
- 5.7 The Supplier may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 5.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

6. NON-DELIVERY

- 6.1 The quantity of any consignment of Goods as recorded by the Supplier upon despatch from the Supplier's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 6.2 The Supplier shall not be liable for any non-delivery of Goods (even if caused by the Supplier's negligence) unless the Customer gives written notice to the Supplier of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 6.3 Any liability of the Supplier for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7. RISK/TITLE

- 7.1 The Goods are at the risk of the Customer from the time of delivery.
- 7.2 Ownership of the Goods shall not pass to the Customer until the Supplier has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
 - (b) all other sums which are or which become due to the Supplier from the Customer on any account.
- 7.3 Until ownership of the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
 - (b) store the Goods (at no cost to the Supplier) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Supplier's property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - (d) maintain the Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks to the

	reasonable satisfaction of the Supplier. On request the Customer shall produce the policy of insurance to the Supplier.		such part of the proceeds of sale as represent the amount owed by the Customer to the Supplier on behalf of the Supplier and the Customer shall account to the Supplier accordingly.
7.4	The Customer may resell the Goods before ownership has passed to it solely on the following conditions:	7.9	On termination of the Contract, howsoever caused, the Supplier's (but not the Customer's) rights contained in this clause 7 shall remain in effect.
	(a) any sale shall be effected in the ordinary course of the Customer's business at full market value; and		
	(b) any such sale shall be a sale of the Supplier's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.	8. PRICE	
7.5	The Customer's right to possession of the Goods shall terminate immediately if:	8.1	Unless otherwise agreed by the Supplier in writing, the price for the Goods shall be the price set out in the Project Plan prior to the date of delivery or deemed delivery.
	(a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or	8.2	The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Goods.
	(b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Supplier and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or	8.3	The Supplier reserves the right to:
	(c) the Customer encumbers or in any way charges any of the Goods.	(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. The Supplier will give the Customer written notice of any such increase 2 months before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 2 weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving 2 months written notice to the Customer; and
7.6	The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Supplier.	(b)	increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
7.7	The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.	(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);
7.8	Where the Supplier is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Supplier to the Customer in the order in which they were invoiced to the Customer and the Customer shall hold	(ii)	any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the specification in respect of the Goods; or
		(iii)	any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
		9. SUPPLIER'S OBLIGATIONS	
		9.1	The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Goods to the Customer, in accordance in all material respects with the Project Plan.
		9.2	The Supplier shall use reasonable endeavours to meet Project Milestones specified in the Project Plan, but any such dates shall be estimates only and time shall not be of the essence of Contract.
		9.3	The Supplier shall use all reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and that have been

communicated to it under clause 10.1(e), provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

10. CUSTOMER'S OBLIGATIONS

10.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide, for the Supplier, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as requested by the Supplier;
- (c) provide, in a timely manner, all such information as the Supplier may request and ensure that it is accurate in all material respects;
- (d) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from any of its premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Supplier of all of its obligations and actions under this clause 10.1(d);
- (e) 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;
- (f) ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;
- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Supplier's Equipment, the use of In-put Material and the use of the Customer's Equipment in relation to the Supplier's Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment in all cases before the date on which the Services are to start.

10.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

10.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract,

subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

11. CHANGES

11.1 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any variations to the Supplier's charges arising from the change;
- (c) the likely effect of the change on the Project Plan; and
- (d) any other impact of the change on the terms of the Contract.

11.2 The Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If the Supplier requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it.

11.3 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Plan and any other relevant terms of the Contract to take account of the change.

11.4 The Supplier may charge for its time spent in assessing a request for change from the Customer on a time and materials basis in accordance with clause 12.

12. CHARGES AND PAYMENT

12.1 Clause 12.2 shall apply if the Supplier provides the Services on a time and materials basis. Clause 12.3 shall apply if the Supplier provides the Services for a fixed price. The remainder of this clause 12 shall apply in either case.

12.2 Where the Services are provided on a time and materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates, as amended from time to time by the Supplier giving not less than three months written notice to the Customer;
- (b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between 9.00 am and 5.00 pm on weekdays (excluding public holidays);
- (c) the Supplier shall be entitled to charge an overtime rate of 50% of the normal daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Project outside the hours referred to in clause 12.2(b);
- (d) all charges quoted to the Customer shall be exclusive of VAT which the Supplier shall add to its invoices at the appropriate rate;
- (e) the Supplier shall ensure that every individual whom it engages on the Services completes time sheets recording time spent, and the Supplier shall use such time sheets to calculate

	the charges covered by each monthly invoice referred to in clause 12.2(f); and	12.11	All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This clause 12.811 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
(f)	the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 12.2. Each invoice shall set out the time spent by each individual whom it engages on the Services and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.	12.12	The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.
12.3	Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Project Plan. The total price shall be paid to the Supplier (without deduction or set-off) in instalments, as set out in the Project Plan. At the end of a period set out in the Project Plan in respect of which an instalment is due, the Supplier shall invoice the Customer for the charges that are then payable, together with expenses, the costs of materials and VAT, where appropriate, calculated as provided in clause 12.4.	13. QUALITY	
12.4	Any fixed price and daily rate contained in the Project Plan excludes: <ul style="list-style-type: none"> (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier at cost; and (b) VAT, which the Supplier shall add to its invoices at the appropriate rate. 	13.1	Where the Supplier is not the manufacturer of the Goods, the Supplier shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Supplier.
12.5	The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within 30 days of receipt.	13.2	The Supplier warrants that (subject to the other provisions of these conditions) upon delivery the Goods shall: <ul style="list-style-type: none"> (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979; (b) be reasonably fit for purpose; and (c) be reasonably fit for any particular purpose for which the Goods are being bought if the Customer had made known that purpose to the Supplier in writing and the Supplier has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of the Supplier.
12.6	Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may: <ul style="list-style-type: none"> (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HSBC Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and (b) suspend all Services until payment has been made in full. 	13.3	The Supplier shall not be liable for a breach of any of the warranties in clause 13.2 unless: <ul style="list-style-type: none"> (a) the Customer gives written notice of the defect to the Supplier, and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when the Customer discovers or ought to have discovered the defect; and (b) the Supplier is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost for the examination to take place there.
12.7	Time for payment shall be of the essence of the Contract.	13.4	The Supplier shall not be liable for a breach of any of the warranties in clause 13.2 if: <ul style="list-style-type: none"> (a) the Customer makes any further use of such Goods after giving such notice; or (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 Goods or (if there are none) good trade practice; or (c) the Customer alters or repairs such Goods without the written consent of the Supplier.
12.8	No payment shall be deemed to have been received until the Supplier has received cleared funds.	13.5	Subject to clause 13.3 and clause 13.4, if any of the Goods do not conform with any of the warranties in clause 13.2 the Supplier shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Supplier so requests, the Customer shall, at the Customer's expense, return the Goods or the part of such Goods which is defective to the Supplier.
12.9	All payments payable to the Supplier under the Contract shall become due immediately on its termination despite any other provision.	13.6	If the Supplier complies with clause 13.5 it shall have no further liability for a breach of any of the warranties in clause 13.2 in respect of such Goods.
12.10	The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the Customer.		

13.7 Any Goods replaced shall belong to the Supplier and any repaired or replacement Goods shall be guaranteed on these terms.

14. INTELLECTUAL PROPERTY RIGHTS

14.1 As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Goods and the Pre-existing Materials shall be owned by the Supplier. Subject to clause 14.2, the Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Goods and the Services. If Contract is terminated, this licence will automatically terminate.

14.2 The Customer acknowledges that, where the Supplier does not own any Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

15. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY

15.1 The Customer 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 Customer by the Supplier, its employees, agents or sub-contractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

15.2 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including Pre-existing Materials and the Supplier's Equipment) shall, at all times, be and remain as between the Supplier and the Customer the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good clause by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

15.3 This clause 15 shall survive termination of the Contract, however arising.

16. LIMITATION OF LIABILITY - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CONDITION

16.1 This clause 16 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of the Contract;
- (b) any use made by the Customer of the Services, the Goods or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

16.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

16.3 Nothing in these Conditions limits or excludes the liability of the Supplier:

- a) for death or personal injury resulting from negligence; or
- b) under section 2(3), Consumer Protection Act 1987; or
- c) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier; or
- d) for any liability incurred by the Customer as a result of any breach by the Supplier of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

16.4 Subject to clause 16.2 and clause 16.3

- (a) the Supplier shall not be liable for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill and/or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or
 - (vii) loss of use; or
 - (viii) loss of corruption of data or information; or
 - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services and Goods as set out in the Project Plan.

17. TERMINATION

17.1 Subject to clause 17.3, the Contract shall terminate automatically on completion of the Project in accordance with the Project Plan.

17.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (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) 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) a floating charge holder 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 17.2 (b) to clause 17.2 (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; or
 - (l) 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.
- 17.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract:
- (a) by giving the Customer 3 months' written notice;
 - (b) 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.
- 17.4 The Customer may terminate the Contract by giving the Supplier not less than 3 months' written notice.
- 17.5 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 been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall, within a reasonable time, return all of the Supplier's Equipment, Pre-existing Materials and Goods. 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 or repossessed, the Customer shall be solely responsible for their safe keeping;
- (c) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected; and
- (d) conditions which expressly or by implication have effect after termination shall continue in full force and effect.

18. FORCE MAJEURE

The Supplier shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including 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 sub-contractors.

19. VARIATION

Subject to clause 4 and clause 11, no variation of the Contract or these Conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties.

20. WAIVER

- 20.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 20.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

21. SEVERANCE

- 21.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
- 21.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.
- 21.3 The parties agree, in the circumstances referred to in clause 21.1 and if clause 21.2 does not apply, to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

22. STATUS OF PRE-CONTRACTUAL STATEMENTS

Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

23. ASSIGNMENT

- 23.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 23.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

24. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

25. RIGHTS OF THIRD PARTIES

- 25.1 The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable

by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

26. NOTICES

Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address or fax number or email address, given in the Contract (or such other address, fax number, email address or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax, email or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax or email, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this clause 26 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax or email, to the fax number of the party or to their email address, in the case of post, that the envelope containing the notice was properly addressed and posted.

27. GOVERNING LAW AND JURISDICTION

- 27.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.
- 27.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.

Schedule 1 - Project Plan

Repairs as requested by the customer as and when required.