

# CASTLE OILS LIMITED

## General Conditions of Purchase for Equipment and Services

### 1. DEFINITIONS

#### 1.1 In the Contract (as defined below):

- 1.1.1 **'Agreed Delivery Address'** means the delivery address set out in the Order or, if no such address is specified in the Order, FCA Contractor's address Incoterms (where the Contractor's address is the one set out in the Order).
- 1.1.2 **'Applicable Laws and Regulations'** has the meaning given in condition 21.
- 1.1.3 **'Authorised Representative'** means a director of the Buyer, or the Buyer's project manager or buyer as set out in the Order, or anyone else nominated in writing by any such person from time to time.
- 1.1.4 **'Buyer'** means Castle Oils Limited (registered in England under company number 01742061).
- 1.1.5 **'Conditions'** means these General Conditions of Purchase for Equipment and Services.
- 1.1.6 **'Contract'** means the contract for the purchase and sale of the Equipment and/or (as appropriate) the provision of the Services, created in accordance with condition 2, and comprising the Order, these Conditions and the Special Conditions.
- 1.1.7 **'Contractor'** means the party supplying the Equipment and/or (as appropriate) the Services set out in the Order.
- 1.1.8 **'Defect'** means any failure of the Equipment and/or (as appropriate) the Services to comply with the Contract (and any failure of the Contractor to comply with its obligations in relation to the Equipment and/or (as appropriate) the Services), including any defect in the design or manufacture of the Equipment, or in the materials or the workmanship used, or any other breach of condition 4 (Specifications, Warranties and Undertakings).
- 1.1.9 **'Defects Liability Period'** means the period set out in condition 16 (Defects Liability).
- 1.1.10 **'Delivery Date'** means the date for delivery of the Equipment to the Agreed Delivery Address, as set out in the Order.
- 1.1.11 **'Due Date'** has the meaning given in condition 11.3.
- 1.1.12 **'Equipment'** means the parts, machinery and equipment (including any software), if any, being supplied under the Contract as set out in the Order.
- 1.1.13 **'Failure'** has the meaning given in condition 19.1.
- 1.1.14 **'Incoterms'** has the meaning given in condition 1.7.
- 1.1.15 **'Indemnitees'** has the meaning given in condition 18.1.
- 1.1.16 **'Installation Period'** has the meaning given in condition 11.8.
- 1.1.17 **'Interim Payment Period'** has the meaning given in condition 12.2.

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- 1.1.18 **'Losses'** means any and all claims, liabilities, losses, damages, costs, expenses (including legal expenses) and injuries (in each case whether direct, indirect or consequential).
- 1.1.19 **'Order'** means the official purchase order, which is raised by the Buyer for the supply of the Equipment and/or (as appropriate) the provision of the Services.
- 1.1.20 **'Payment Period'** has the meaning given in condition 11.1.
- 1.1.21 **'Price'** means the price payable for the Equipment and/or (as appropriate) the Services as set out in the Order.
- 1.1.22 **'Retention'** has the meaning given in condition 11.8.
- 1.1.23 **'Satisfactory Quality'** means the standard that a reasonable person would regard as satisfactory, taking into account any description of the Equipment, the Price (if relevant) and all other relevant circumstances. The quality of the Equipment shall include the state and condition of the Equipment, its appearance and finish and the safety and durability of the Equipment.
- 1.1.24 **'Services'** means the installation activity and/or (as appropriate) other services, if any, being supplied under the Contract as set out in the Order.
- 1.1.25 **'Special Conditions'** means the special terms and conditions of purchase, if any, issued with the Order.
- 1.1.26 **'Specification'** means any specifications relating to the Equipment and/or (as appropriate) the Services referred to in the Order and in the event of conflict between any specifications provided by the Buyer and the Contractor, those provided by the Buyer shall prevail.
- 1.1.27 **'Unfinished Equipment'** has the meaning given in condition 23.1.
- 1.1.28 **'Working Day'** means a day (other than a Saturday, Sunday or a public holiday in England) when banks in London are open for business.
- 1.2 Any reference in the Contract to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Conditions and in the Special Conditions are for convenience only and shall not affect their interpretation.
- 1.4 A reference to writing or written in the Contract includes faxes and emails, subject to conditions 9.1 and 25 (Notices).
- 1.5 Save as otherwise expressly provided, references to conditions in these Conditions or (as appropriate) the Special Conditions are to the terms and conditions of these Conditions or (as appropriate) the Special Conditions.
- 1.6 The words including and includes, when used in the Contract, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.7 Any reference to one of the Incoterms in the Contract shall be a reference to the relevant Incoterm as set out in the International Chamber of Commerce (**'ICC'**) official rules for the interpretation of trade terms, published by the ICC, and applicable at the time the Order is placed.

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### 2. BASIS OF PURCHASE

- 2.1 The Buyer shall purchase and the Contractor shall sell the Equipment and/or (as appropriate) the Services in accordance with the Contract.
- 2.2 These Conditions, the Special Conditions and the Order shall apply to the Contract to the exclusion of any other terms and conditions, including any terms and conditions upon which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Contractor, unless any variations are made to the Contract in accordance with condition 9 (Variation).
- 2.3 In the event of any inconsistency between these Conditions, the Order and the Special Conditions, the following descending order of precedence shall apply:
- 2.3.1 the Order.
  - 2.3.2 the Special Conditions.
  - 2.3.3 these Conditions.
- 2.4 The Buyer's Order shall be deemed to be an offer by the Buyer to buy the Equipment and/or (as appropriate) the Services, subject to these Conditions and the Special Conditions. Subject to condition 2.5, the Contract shall be created when the Buyer has issued an Order and either:
- 2.4.1 the Order has been accepted by the Contractor within fourteen (14) days of the date of the Order:
    - (a) by returning a copy of the Order signed by the Contractor or otherwise by accepting the Order in writing; or, if earlier,
    - (b) by fulfilling the Order in whole or in part (and the purchase of materials or components by the Contractor for the purpose of an Order, or the commencement of work or the delivery of goods by the Contractor under any such Order, shall be deemed to be an acceptance of the Order).
  - 2.4.2 the Contractor has failed to reject the Order in writing within fourteen (14) days of the date of the Order (in which case the Contractor will be deemed to have accepted the Order, and the Contract shall be created, on the day falling fifteen (15) days after the date of the Order).
- 2.5 The Buyer shall be entitled to withdraw an Order at any time prior to the Contract being created as detailed in condition 2.4.

### 3. SCOPE OF SUPPLY

The Contractor shall provide the Buyer with the Equipment and/or (as appropriate) the Services referred to in the Order. The Equipment will include all relevant documentation, including by the way of declaration of conformity, certificate of incorporation, material mill certificates and test and inspection certificates (and any documentation that is set out or referred to in the Contract, or which is otherwise required to comply with any Applicable Laws and Regulations).

### 4. SPECIFICATIONS, WARRANTIES AND UNDERTAKINGS

- 4.1 The Contractor warrants, represents and undertakes to ensure that:

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- 4.1.1 the Equipment and/or (as appropriate) the Services shall conform in all respects as to quality, quantity and description with the particulars stated in the Contract and in the Specification.
  - 4.1.2 the Equipment shall be of Satisfactory Quality, of sound materials and workmanship, new and unused, without fault or defect, and fit for all the purposes for which Equipment of the kind in question is commonly supplied.
  - 4.1.3 the Equipment shall be equal in all respects to any relevant samples and patterns and the Specification.
  - 4.1.4 the Equipment and/or (as appropriate) the Services shall be capable of any standard of performance specified in the Contract and the Specification.
  - 4.1.5 the Equipment and/or (as appropriate) the Services shall be fit for any purpose for which they are required by the Buyer and which either expressly or by implication is indicated by the Buyer or otherwise known to the Contractor on or before placing of the Order or which is held out by the Contractor.
  - 4.1.6 the Equipment shall be designed and manufactured to meet all environmental requirements of the territory where the Equipment is to be used.
  - 4.1.7 the paint, finish and labelling of the Equipment shall meet the requirements of the Buyer and any Applicable Laws and Regulations.
  - 4.1.8 the Services shall be performed using reasonable skill and care, by suitably skilled, experienced and qualified individuals and in accordance with generally recognised commercial practices and standards.
  - 4.1.9 the Contractor shall comply with (and it shall ensure that its employees and representatives comply with) all health and safety and security rules, regulations and requirements that apply at the premises where the Equipment is to be delivered, where the Equipment is to be installed and/or (as appropriate) where the Services are to be performed.
  - 4.1.10 the Contractor shall obtain (and at all times maintain) all necessary licences, permits and consents required in relation to the Equipment and/or (as appropriate) the Services and the performance of the Contract.
  - 4.1.11 the Equipment and/or (as appropriate) the Services shall be provided in accordance with and shall comply with all Applicable Laws and Regulations.
- 4.2 The provisions of this condition 4 shall survive performance, acceptance or payment pursuant to the Contract and shall extend to any substituted or repaired equipment and/or (as appropriate) any substituted or remedial services provided by the Contractor.
- 4.3 If the Contractor is in breach of this condition 4, then in addition to any other remedies that the Buyer may have under the Contract or otherwise, the Buyer shall be entitled to exercise the remedies in conditions 16 (Defects Liability) and 19 (Rejection).

## 5. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

- 5.1 All data, drawings, formulae, designs, plates, patterns, specifications and other information, property, software and equipment (all together the ‘**Confidential Property**’) provided by the Buyer to the Contractor, or otherwise acquired or developed by or on behalf of the Contractor, in

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connection with the Contract or otherwise, shall remain the confidential property of the Buyer or its customers.

- 5.2 The Contractor shall maintain and keep all such Confidential Property in good condition and on completion of the Contract or as otherwise directed by the Buyer shall return it to the Buyer, all at the Contractor's expense.
- 5.3 The Contractor shall keep the Confidential Property in strictest confidence. The Contractor shall not disclose or use the Confidential Property nor permit the Confidential Property to be used or disclosed unless:
- 5.3.1 such disclosure or use is for the purpose of supplying the Equipment to or executing the Services for the Buyer.
  - 5.3.2 any such third party is subject to similar obligations as to confidentiality.
  - 5.3.3 the Contractor ensures that any use of the Confidential Property by, or on behalf of, the Contractor shall be in accordance with any instructions or terms and conditions relating thereto advised by the Buyer to the Contractor.
- 5.4 Unless otherwise expressly stated in the Order: all intellectual property rights (including, patents, design rights, copyright and rights in know-how) relative to the Confidential Property shall remain the property of the Buyer or its customers; and the Contractor assigns to the Buyer, with full title guarantee and free from any third party rights, all intellectual property rights in the Confidential Property and in anything manufactured or developed by, or on behalf of the Contractor, for the Buyer, pursuant to the Contract; and in each case the Contractor shall have no rights thereto.
- 5.5 Unless otherwise expressly stated in the Order and notwithstanding the foregoing paragraph, if the Equipment incorporates, or the Contractor in providing the Services otherwise uses, any software or other materials owned by a third party ('**Third Party Materials**'), the Contractor shall procure from any such third party a non-exclusive, perpetual, transferable licence for the Third Party Materials to be used in conjunction with the Services and the Equipment and any such licences shall be granted at no additional cost to the Buyer.
- 5.6 This condition 5 shall survive termination of the Contract howsoever arising.

## 6. CONTRACTOR'S RESPONSIBILITIES

- 6.1 The Contractor shall be responsible for:
- 6.1.1 reviewing the Order to ensure that the contents are correct. This will include confirmation of: the issue or version number of any documentation referenced in the Contract (if applicable); the Price; the Delivery Date and the date for performance of any Services; the Agreed Delivery Address; and the complete scope of supply.
  - 6.1.2 confirming the accuracy of any Specification and/or (as appropriate) drawings issued in connection with the Contract.
  - 6.1.3 ensuring that the design and performance of the Equipment meets the requirements of the Contract.
  - 6.1.4 ensuring that an appropriately qualified and experienced individual is assigned to the Contract who will be responsible for all commercial and technical liaison between the Buyer and the Contractor.

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6.1.5 ensuring that all design changes which occur during the life of the Contract are forwarded to and acted upon by the relevant personnel within their organization and confirming back to the Buyer that such changes have been received and actioned.

#### **7. INSPECTION AND TESTING OF THE EQUIPMENT AND/OR SERVICES**

7.1 Before dispatch of the Equipment and/or (as appropriate) on completion of the Services the Contractor shall carefully inspect and test the Equipment and/or (as appropriate) the Services to ensure compliance with the Contract. The Contractor and an Authorised Representative shall agree a date for these tests and the Contractor shall advise such Authorised Representative in writing of any proposed time and place for such tests at least fourteen (14) days prior to the agreed date (unless otherwise set out in the Order). The Buyer and/or (as appropriate) its Authorised Representative shall be entitled to be present when such tests are carried out. The Contractor shall supply to such Authorised Representative a copy of the Contractor's completed test and inspection sheets certified by the Contractor to be a true copy and on which the Buyer and its customers shall be entitled to rely.

7.2 If any such inspection or test demonstrates that the Equipment and/or (as appropriate) the Services do not comply with the Contract, the Contractor shall inform the Authorised Representative accordingly in writing and the Contractor shall then forthwith at the Contractor's expense and with all speed take such steps as may be necessary to ensure such compliance, without affecting the Delivery Date and/or (as appropriate) the date for performance of the Services. The Contractor's failure to do so shall constitute a material breach of Contract. Once the necessary work has been carried out the Contractor shall advise the Authorised Representative in writing and the Contractor shall once again inspect and test the Equipment and/or (as appropriate) the Services to ensure compliance with the Contract in accordance with the procedure outlined in condition 7.1 above.

7.3 The Buyer and/or (as appropriate) its Authorised Representative shall be entitled to inspect and test the Equipment and/or (as appropriate) the Services during the manufacturing process, whilst the Equipment is in storage, and whilst the Services are being performed, for which purpose the Contractor shall provide or shall procure the provision of all such access and facilities as may reasonably be requested by the Buyer and/or (as appropriate) its Authorised Representative.

7.4 If as a result of any inspection or test the Buyer and/or (as appropriate) its Authorised Representative is/are of the opinion, acting reasonably, that the Equipment and/or (as appropriate) the Services do not comply with the Contract or are unlikely so to comply, the Buyer and/or (as appropriate) its Authorised Representative may inform the Contractor accordingly in writing and the Contractor shall then forthwith at the Contractor's expense and with all speed take such steps as may be necessary to ensure such compliance, without affecting the Delivery Date and/or (as appropriate) the date for performance of the Services. The Contractor's failure to do so shall be a material breach of Contract.

7.5 The Buyer's and/or (as appropriate) its Authorised Representative's attendance or non-attendance at any inspection or test carried out by the Contractor, or the Buyer's and/or (as appropriate) its Authorised Representative's own inspection or test of (or failure to inspect or test) the Equipment and/or (as appropriate) the Services does not imply acceptance of the Equipment and/or (as appropriate) the Services or acceptance of the performance or adequacy of the Equipment and/or (as appropriate) the Services and shall not relieve the Contractor of its obligations under the Contract.

#### **8. DAMAGE OR LOSS IN TRANSIT**

The Contractor shall be responsible for any Equipment damaged or lost in transit.

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#### 9. VARIATION

9.1 Subject to condition 9.2, no variation to the Contract shall be valid unless made in writing (excluding email) and signed by both parties (in the case of the Buyer, by an Authorised Representative).

9.2 The Buyer may at any time, by advising the Contractor in writing (including email), vary an Order and the Contractor shall be bound by any such variations. Any change to the Price:

9.2.1 must be recorded in a new Order or an official amendment to the Order issued by the Buyer.

9.2.2 shall be based, as far as possible, on the pricing mechanism applicable to the original Contract, unless otherwise agreed.

The Contractor shall not delay or suspend performance of its obligations under any Contract pending agreement of any change to the Price.

#### 10. PRICE

10.1 The Price shall be as stated on the Order and, unless otherwise expressly stated on the Order, shall be:

10.1.1 exclusive of any applicable value added taxes or other government added taxes, (which shall be payable by the Buyer on the receipt of a suitable invoice).

10.1.2 inclusive of all costs and charges relating to the Equipment and/or (as appropriate) the Services, including any costs and charges for packaging, packing, documentation, insurance, transportation (to ensure that the Contract is fulfilled) and any taxes, duties or levies other than government added taxes pursuant to condition 10.1.1.

10.1.3 fixed and firm for the duration of the Contract unless otherwise agreed in accordance with condition 9 (Variation).

#### 11. TERMS OF PAYMENT

11.1 Subject to the remaining provisions of this Contract and any express provision in the Order, payment of any invoice under the Contract shall be made by the fifteenth working day of the second month following the month of receipt by the Buyer of a proper invoice, submitted in accordance with this condition 11 (the **'Payment Period'**). The time for payment of an invoice shall not be of the essence of the Contract.

11.2 The Contractor shall be entitled to submit its invoice(s) for the Price on the date(s) set out in, and in accordance with, the Contract, provided that the Contractor has performed all of its obligations (or, as appropriate, the relevant obligations) under the Contract to the complete satisfaction of the Buyer and provided that:

11.2.1 where a Delivery Date and/or (as appropriate) a date for performance of the Services is specified in the Contract, the Payment Period shall not commence until after any such date(s), notwithstanding that the Contractor effects earlier delivery or completion.

11.2.2 any express payment date or provision shall (without prejudice to any other right the Buyer may have) be subject to adjustment to take account of any delay in performance of the Contract or any part thereof by the Contractor or in delivery by the Contractor thereunder otherwise than pursuant to a delay due to the Buyer as detailed in condition 14 (Delivery).

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- 11.2.3 all invoices shall be rendered to the Buyer bearing sufficient detail including Order and part numbers and such supporting documentation as may be required by the Buyer to identify the Equipment and/or (as appropriate) the Services (or part thereof) to which the invoice relates.
- 11.3 Subject to condition 11.6, if any sum under the Contract is not paid by the end of the Payment Period or the Interim Payment Period (as appropriate) (the '**Due Date**') then that sum shall bear interest from the Due Date until payment is made in full, both before and after any judgment, at the rate of two percent (2%) per annum over the bank rate set by the Bank of England from time to time.
- 11.4 The parties agree that the remedy in condition 11.3 is a 'substantial contractual remedy' under the Late Payment of Commercial Debts (Interest) Act 1998 (the '**Act**') and shall apply in place of the remedy in the Act.
- 11.5 The remedy contained in condition 11.3 shall be the only remedy available to the Contractor for failure by the Buyer to pay an invoice by the relevant Due Date and the Contractor shall not suspend performance of its obligations or terminate the Contract as a result of any invoice being outstanding.
- 11.6 The Buyer shall be entitled to reject any invoice which does not comply with this condition 11 and/or (as appropriate) condition 12 (Interim Payment Certificates), which will result in payment (and the commencement of the Payment Period or the Interim Payment Period (as appropriate)) being delayed.
- 11.7 Payments made by the Buyer under the Contract do not denote acceptance of any Equipment and/or (as appropriate) Services and shall be without prejudice to the Buyer's rights and remedies under the Contract or otherwise in relation to the Contractor's failure to comply with its obligations under the Contract.
- 11.8 Notwithstanding any other provision of the Contract, a percentage of the Price (the '**Retention**'), (which will be ten per cent (10%) of the Price unless otherwise specified in the Order or the Special Conditions), may be retained by the Buyer for the Defects Liability Period to insure against the performance of the Equipment and/or (as appropriate) the Services, provided that where the Contract is solely for the provision of installation services, the Retention shall only be retained until the installation services have been performed to the complete satisfaction of the Buyer and, where appropriate, its customer (the '**Installation Period**'). The Buyer shall be entitled to use the Retention in satisfaction of any amount due under conditions 16 (Defects Liability) and 19 (Rejection). Following settlement of any claims that arise during the Defects Liability Period (or, as appropriate, the Installation Period) the Buyer shall pay any remaining balance to the Contractor. The Retention shall not be regarded as imposing any limit on the amount of any claims under condition 16 (Defects Liability), condition 19 (Rejection) or otherwise and nothing in this condition 11.8 shall prejudice, limit or otherwise affect any right or remedy that the Buyer may have from time to time against the Contractor either under this Contract or at law.
- 11.9 Without prejudice to any other right or remedy the Buyer may have under the Contract or otherwise, the Buyer shall be entitled to set off against the Price (or any other liability of the Buyer to the Contractor under a particular Contract) any sums owed to the Buyer by the Contractor (whether under the relevant Contract or otherwise).
12. **INTERIM PAYMENT CERTIFICATES**
- 12.1 The Contract may allow for interim payments to be made by the Buyer to the Contractor. In such circumstances, the Contractor may request an interim payment in accordance with the Order. Thereafter the parties will assess the work that has been done and shall agree the relevant interim



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payment that is due in accordance with the Order. The Contractor will provide the Buyer, on request, with sufficient documentary evidence to substantiate the amount being claimed and the basis for the claim, including documentary evidence of any Equipment delivered and/or (as appropriate) Services provided, and any hours worked and consumables used to complete the installation up to the relevant date.

- 12.2 Once the Buyer is satisfied that the claim is valid and the amount of the interim payment has been agreed, an interim payment certificate setting out the agreed interim payment shall be prepared by the Buyer, and signed by an Authorised Representative, which will then entitle the Contractor to submit an interim invoice for the agreed interim payment specified in such authorised certificate. Subject to the remaining provisions of this Contract (including any Retention to be retained by the Buyer pursuant to condition 11 (Terms of Payment)) and any express provision in the Order, payment of any amount detailed in an authorised certificate shall be made by the fifteenth working day of the second month following the month of receipt of the relevant interim invoice (the **'Interim Payment Period'**).

### 13. FORCE MAJEURE

- 13.1 Provided that it has complied with condition 13.2 and subject to condition 13.3, a party shall not be liable to the other party or be in breach of Contract by reason of any delay in performing, or any failure to perform, any of its obligations (and shall be entitled to a reasonable extension of time for performing such obligations) if:

13.1.1 the delay or failure arises as a result of an act of god (including fire, flood, earthquake or any other natural disaster), or a war or a terrorist attack (a **'Force Majeure Event'**).

13.1.2 the Force Majeure Event arises after the date of the Contract and was not foreseeable at that date.

- 13.2 If a Force Majeure Event occurs and affects the performance of a party's obligations under the Contract then that party shall as soon as reasonably practicable:

13.2.1 inform the other party in writing to that effect giving full details of:

- (a) the nature and extent of the Force Majeure Event;
- (b) the likely duration of the Force Majeure Event;
- (c) the effect that the Force Majeure Event will have on the performance of that party's obligations; and
- (d) the action which that party proposes to take to mitigate the effect of the Force Majeure Event.

13.2.2 use all reasonable endeavours to:

- (a) mitigate the effect of the Force Majeure Event;
- (b) carry out its obligations under the Contract; and
- (c) resume performance of its obligations.

- 13.3 If the performance of a party's obligations is prevented or delayed by a Force Majeure Event and this continues for a period in excess of thirty (30) days then the other party shall be entitled to terminate the Contract by giving fourteen (14) days' notice to that party.

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#### 14. DELIVERY

- 14.1 The Contractor shall ensure that the Equipment is delivered to the Agreed Delivery Address and/or (as appropriate) that the Services are performed, all in accordance with the Contract.
- 14.2 The Contractor shall ensure that the Equipment is packaged and secured:
- 14.2.1 in accordance with the Contract.
  - 14.2.2 as required to transport the Equipment to its destination safely, undamaged and in proper condition.
- 14.3 The Contractor shall provide at its own cost non-returnable packing cases, drums, timbers, supports, crates and other packing materials, which comply with condition 21, and which will prevent damage and deterioration to the Equipment whilst in storage and in transit.
- 14.4 The Contractor shall deliver the Equipment and/or (as appropriate) perform the Services at the time(s) and in the sequence, at the place and in the manner specified in the Order. Time of delivery of the Equipment and/or (as appropriate) performance of the Services is of the essence of the Contract. Unless otherwise specified in the Contract (or agreed between the parties in writing) deliveries shall only be accepted by the Buyer and Services shall only be performed during normal business hours.
- 14.5 The Contractor shall ensure that each delivery is accompanied by a delivery note which shows, among other things, the Order number, the date of the Order, the date of delivery and the contents of the delivery. The Contractor shall also supply any instructions or other information required by the Buyer to enable the Buyer and/or (as appropriate) its customer to transport, off-load, store, accept, install, use and maintain the Equipment and/or (as appropriate) to accept the Services in good time prior to delivery and/or performance (as appropriate).
- 14.6 If the Equipment (or any part thereof) is not delivered, and/or (as appropriate) if the Services (or any part thereof) are not performed, in accordance with the timescales specified in the Contract (or any extension of such timescales permitted in writing by the Buyer), then, without prejudice to the Buyer's other rights and remedies under the Contract or otherwise, the Buyer reserves the right to exercise the remedies set out in conditions 19 (Rejection) and 23 (Contractor's Default).
- 14.7 The Contractor will advise the Buyer in writing three (3) Working Days in advance of the intended date of dispatch of the Equipment and/or (as appropriate) the intended date of performance of the Services. The Equipment will not be dispatched and the Services will not be performed until the Buyer confirms in writing that the dispatch can be made and that the site is ready and prepared to receive the Equipment and/or (as appropriate) that the Services can be performed.
- 14.8 If for any reason the Buyer is unable to accept delivery of the Equipment and/or (as appropriate) performance of the Services at the time when the Equipment is due and ready for delivery, and/or (as appropriate) the Services are due and ready to be performed, the Contractor shall store the Equipment, safeguard it and prevent its deterioration and insure the Equipment in accordance with condition 20 (Insurance) and/or (as appropriate) shall defer the Services, in each case until the Buyer is able to accept delivery and performance of the same and the Buyer shall be liable to the Contractor for the reasonable cost of storage (including insurance) of the Equipment, but shall not otherwise be liable for its failure to accept delivery of the Equipment and/or (as appropriate) performance of the Services, provided that the Buyer shall have no liability in respect of the first thirty (30) days of any period of storage and in any event shall not be liable for any storage costs (including insurance costs) that occur within thirty (30) days of the relevant Delivery Date or (as appropriate) the date for performance of the Services set out in the Order.

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#### 15. PASSING OF RISK AND PROPERTY

15.1 Without prejudice to any right of rejection which may accrue to the Buyer under these terms and conditions or otherwise:

15.1.1 and subject to the rest of this condition 15, property and risk in the Equipment shall pass to the Buyer on delivery at the Agreed Delivery Address.

15.1.2 if payment has been made for the Equipment prior to delivery, property shall pass to the Buyer when payment is made.

15.1.3 subject to condition 15.1.2, if the Contractor postpones delivery at the request of the Buyer pursuant to condition 14 (Delivery) above, property in the Equipment shall pass to the Buyer seven (7) days after the date when the Contractor advises the Buyer that the Equipment is ready for dispatch pursuant to condition 14.7 or on such other date as may be agreed but the Equipment shall nevertheless remain at the Contractor's risk until delivery has been completed.

15.1.4 subject to condition 15.1.2, if the Buyer exercises its rights under condition 17.1 or condition 23.1, property in the Unfinished Equipment or (as appropriate) the relevant part of the Equipment pursuant to condition 17.1 shall pass to the Buyer when delivery is demanded and risk shall pass to the Buyer when delivery is made, or when the Buyer uplifts the Unfinished Equipment or (as appropriate) the relevant part of the Equipment pursuant to condition 17.1.

#### 16. DEFECTS LIABILITY

16.1 The Defects Liability Period for the Equipment and/or (as appropriate) the Services supplied by the Contractor under the Contract shall be the period stipulated in the Contract or (if no period is stipulated), the later of: twelve (12) months from the Completion Date; or eighteen (18) months following delivery of the Equipment to the Agreed Delivery Address. The Completion Date shall be the date when the Contractor has performed all of its obligations under the Contract, to the complete satisfaction of the Buyer and, where appropriate, its customer.

16.2 The Buyer reserves the right to request an extension to the Defects Liability Period should the need arise and the Contractor shall not unreasonably refuse any such request.

16.3 If within the Defects Liability Period the Buyer advises the Contractor of any Defect, the Buyer may exercise the remedies set out in condition 19 (Rejection).

#### 17. TERMINATION OR SUSPENSION OF CONTRACT

17.1 The Buyer reserves the right to suspend or terminate the Contract (or any part of it) at any time for convenience by notice in writing to the Contractor. In such circumstances, notwithstanding any other provision of the Contract, the Buyer will only be liable to pay the Contractor for any direct costs incurred by the Contractor in relation to the Contract (excluding any overheads or profit element), in respect of which the Contractor can produce documentary evidence, and which have been incurred up to and including the date of termination or suspension, provided always that:

17.1.1 such direct costs do not exceed the part of the Price that is attributable to the part of the Contract that has been suspended or terminated.

17.1.2 the Contractor has done everything possible to mitigate any costs incurred.

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17.1.3 the Contractor shall only be entitled to recover direct costs relating to the Equipment to the extent that the Equipment was manufactured or fabricated in accordance with a unique specification from the Buyer and the Contractor shall not be entitled to recover any costs relating to the Equipment if it was not manufactured or fabricated as aforesaid or if it is a standard item or stock in trade.

In the case of suspension of the Contract the Buyer shall state in writing the reason(s) for the suspension and will, if applicable, extend the Delivery Date and/or (as appropriate) the date for performance of the Services accordingly. In the case of termination as aforesaid, the Buyer shall have the right, by serving notice, to require the Contractor to deliver, on demand, any part of the Equipment the Buyer has paid for, to the address specified by the Buyer in that notice and the Contractor shall deliver such part of the Equipment and oblige any third party in possession or custody of such part of the Equipment to deliver it on demand to the Buyer and the provisions of conditions 23.2 to 23.4 shall apply (substituting references to the Unfinished Equipment with references to the part of the Equipment the Buyer has paid for pursuant to this condition 17.1) provided that the Buyer shall not be entitled to recover its Losses in respect of the manufacture and completion of such part of the Equipment pursuant to condition 23.4.

17.2 The Contractor shall procure that any contract it has with any third party in respect of the supply of goods and/or services it requires to allow it to supply the Equipment and/or (as appropriate) the Services to the Buyer, contains terms equivalent to the terms in condition 17.1 and condition 23 (Contractor's Default).

17.3 Without prejudice to any other remedy that may be available to the Buyer under the Contract or otherwise, the Buyer may terminate any Contract with the Contractor without liability forthwith by giving written notice to the Contractor on or at any time after the occurrence of any of the following events:

17.3.1 the Contractor being in breach of an obligation under the Contract and, if the breach is capable of remedy within thirty (30) days (where time is not of the essence in the performance of the obligation), failing to remedy the breach within thirty (30) days of receipt of notice from the Buyer giving details of the breach and requiring the Contractor to remedy the breach.

17.3.2 the Contractor passing a resolution for its winding up or a court of competent jurisdiction making an order for the Contractor to be wound up or dissolved or the Contractor being otherwise dissolved.

17.3.3 the appointment of an administrator (whether out of court or otherwise) of or the making of an administration order in relation to the Contractor, or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or part of the Contractor's undertaking, assets, rights or revenue.

17.3.4 the Contractor suspending, or threatening to suspend, payment of its debts or being unable to pay its debts as they fall due or admitting inability to pay its debts or being deemed unable to pay its debts.

17.3.5 the Contractor entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or taking steps to obtain a moratorium or making an application to a court of competent jurisdiction for protection from its creditors.

17.3.6 the directors of the Contractor or any other person requesting the appointment of, or giving notice of their intention to appoint, or taking any step with a view to appointing, a

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liquidator, trustee in bankruptcy, administrator (whether out of court or otherwise) or similar officer.

- 17.3.7 the Contractor ceasing, or threatening to cease, to carry on business.
- 17.3.8 any similar step or proceeding to those outlined in conditions 17.3.2 to 17.3.7 above being taken or made in respect to the Contractor in any jurisdiction to which the Contractor is subject.
- 17.3.9 any similar step or proceeding to those outlined in conditions 17.3.2 to 17.3.8 above being taken or made in respect of any member of the Contractor's group.
- 17.3.10 the Buyer reasonably apprehending that any of the events outlined in conditions 17.3.2 to 17.3.9 above is about to occur.
- 17.3.11 a change of Control of the Contractor, where '**Control**' means the power of a person to secure:
- (a) by means of the holding of shares or the possession of voting power in or in relation to the Contractor or any other body corporate; or
  - (b) by virtue of any powers conferred by the constitutional document(s) regulating the Contractor or any other body corporate,

that the affairs of the Contractor are conducted in accordance with the wishes of that person.

- 17.4 Either party shall be entitled to terminate the Contract in accordance with condition 13.3.
- 17.5 Subject to the remainder of this condition 17, upon termination or suspension having been effected by the Buyer, it shall have no obligation under the relevant Contract to accept delivery of any Equipment and/or (as appropriate) performance of any Services or to pay for the same.
- 17.6 Termination of the Contract, howsoever arising, shall not affect or prejudice the accrued rights of the parties as at termination, or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

## 18. INDEMNITY

- 18.1 The Contractor shall indemnify the Buyer and its employees, sub-contractors, agents and customers (the '**Indemnitees**') in respect of all Losses suffered by, or incurred by, or paid by the Indemnitees and arising from or in connection with any infringement or alleged infringement of any patent, design, copyright, database rights, trademark or trade name (whether registered or unregistered) or any other intellectual property rights, relating to the Equipment and/or (as appropriate) the Services, or the Contract.
- 18.2 The Contractor shall indemnify the Indemnitees in respect of all Losses suffered by, or incurred by, or paid by the Indemnitees to the extent that the same shall have been caused wholly or in part by, or arise in connection with, any Defect (whether latent or patent) or any Failure or any breach of warranty or breach of Contract by, or negligence of, the Contractor.
- 18.3 In the event of any claim being made against any of the Indemnitees by reason of any matter referred to in this condition 18 and in respect of which the Contractor has given an indemnity, the Contractor shall, on written request from the Buyer, and at its own expense, conduct negotiations for the settlement of the same and any litigation which may arise therefrom. The Contractor shall give to the Buyer such reasonable security as shall from time to time be required by the Buyer to

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cover the amount (to be reasonably estimated by the Buyer) of any Losses for which the Indemnitees may become liable and the Contractor shall not settle any claim without the Buyer's consent, such consent not to be unreasonably withheld or delayed. If the Indemnitees afford any assistance to the Contractor in connection with such negotiations and litigation, the Contractor shall repay any costs and expenses (including any legal costs and expenses) incurred by or on behalf of the Indemnitees in doing so.

18.4 The provisions of this condition 18 shall remain in full force and effect notwithstanding the parties' remaining obligations under the Contract may have been discharged or otherwise terminated.

#### 19. REJECTION

19.1 Without prejudice to any other right or remedy which the Buyer may have under the Contract or otherwise, if any part of the Equipment and/or (as appropriate) the Services is found not to be in accordance with the Contract, or if the Contractor has not complied with any of its obligations under the Contract (a '**Failure**'), the Buyer shall be entitled at its sole discretion to avail itself of any one or more of the following remedies (whether or not any part of the Equipment and/or (as appropriate) the Services has been accepted by the Buyer):

19.1.1 to rescind the Contract.

19.1.2 to terminate the Contract without liability to the Contractor.

19.1.3 to refuse to accept any subsequent delivery of the Equipment and/or (as appropriate) performance of the Services without liability to the Contractor and to recover from the Contractor any money already paid by the Buyer in respect of such Equipment and/or (as appropriate) Services.

19.1.4 to reject the Equipment and/or (as appropriate) the Services (or any part thereof) already delivered and/or performed, and return the rejected Equipment to the Contractor (at the Contractor's risk and expense), or make the rejected Equipment available for the Contractor to collect, and recover from the Contractor any money already paid by the Buyer in respect of such rejected Equipment and/or (as appropriate) Services.

19.1.5 to give the Contractor the opportunity, at the Contractor's expense, to repair or replace the Equipment and/or (as appropriate) to re-execute the Services (at the premises of the Contractor, or the Buyer, or its customer, as directed by the Buyer) in which case, the Contractor shall repair or replace the Equipment and/or (as appropriate) re-execute the Services in accordance with the Buyer's instructions, in the shortest possible time frame and with minimum inconvenience to the Buyer and its customer, so that the Equipment and/or (as appropriate) the Services (and the Contractor) complies with the Contract.

19.1.6 to procure, at the Contractor's expense, any goods and services required to make the Equipment and/or (as appropriate) Services comply with the Contract (including modifying or repairing the Equipment (or any part thereof) or procuring replacement goods or services).

19.1.7 to recover from the Contractor any liquidated damages set out in the Order and/or the Special Conditions (as appropriate) and any other liquidated damages that the Contractor is due to pay as a result of the Failure.

19.1.8 to claim damages for any Losses incurred or suffered as a result of the Failure.

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#### 20. INSURANCE

- 20.1 The Contractor shall put in place and maintain appropriate insurance policies with a reputable insurer acceptable to the Buyer, acting reasonably, to cover:
- 20.1.1 any materials or property sent to the Contractor by, or on behalf of, the Buyer for any purpose in connection with the Contract, such insurance to be against any loss, damage or deterioration, which may occur whilst such materials or property are in the Contractor's custody or control.
  - 20.1.2 any Equipment which is stored by or on behalf of the Contractor for the Buyer pursuant to condition 14.8, such insurance to be against any loss, damage or deterioration, which may occur whilst such Equipment is in storage.
  - 20.1.3 for the duration of the Contract:
    - (a) the risks and liabilities accepted by the Contractor under this Contract (including public liability insurance, employers' liability insurance, products liability insurance and (where appropriate) professional indemnity insurance); and
    - (b) any insurance cover specified by the Buyer prior to commencement of the Contract.
- 20.2 The Contractor shall ensure that the Buyer's interest is noted (or that a generic interest clause has been included) on each insurance policy put in place and maintained pursuant to condition 20.1.
- 20.3 The Contractor shall promptly produce copies of its insurance policies if requested to do so by the Buyer.
- 20.4 Failure to comply with this condition 20 shall constitute a material breach of the Contract and in addition to any other remedies available to the Buyer under the Contract or otherwise, in the event of such default the Buyer may itself effect such insurance and deduct the cost from any payment or payments due to the Contractor under the Contract or otherwise recover the cost from the Contractor.

#### 21. STATUTORY REQUIREMENTS

The Contractor shall in all matters arising in the performance of the Contract conform, and shall ensure that the Equipment and/or (as appropriate) the Services (and any documentation provided in respect thereof) conform(s), with all statutes, statutory rules, orders, regulations, bye-laws, and other instruments having the force of law, from time to time in force and applicable to the Equipment and/or (as appropriate) the Services, any documentation provided in respect thereof, and the performance of the Contract, including those relating to the design, manufacture, packaging, packing, labelling, delivery, sale, resale, use and safe disposal of the Equipment and/or (as appropriate) the provision of the Services and including those applicable in the country where the Equipment will be used and/or (as appropriate) the Services will be performed (together the '**Applicable Laws and Regulations**').

#### 22. ASSIGNMENT AND SUB-CONTRACTING

The Contractor shall not, without the prior express consent in writing of the Buyer, assign or transfer or purport to assign or transfer the Contract or any part of it to any other person, firm or company. The Contractor shall not, without the prior express consent in writing of the Buyer, sub-contract the Contract or any part of it and any sub-contracting made (whether with or without the Buyer's consent) shall not relieve the Contractor of any of its obligations under the Contract. The

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Contractor shall be responsible for the acts and omissions of its sub-contractors. The Buyer may assign or transfer the Contract or any part of it to any person, firm or company without consent.

#### 23. CONTRACTOR'S DEFAULT

23.1 If the Contract is terminated by the Buyer (other than for convenience) before the Equipment is delivered, or if the Equipment is not delivered in accordance with the timescales in the Contract, or if the Buyer concludes, in its reasonable belief, that the Contractor has not conducted his work so as to be able to deliver the Equipment at the time specified in the Contract and the Buyer notifies the Contractor accordingly; then, without prejudice to the Buyer's rights accruing under the Contract or otherwise, the Buyer shall have the right, by serving notice, to require the Contractor to deliver, on demand, the Equipment (or any part thereof and in whatever state it may be in) (the '**Unfinished Equipment**') to the address specified by the Buyer in that notice and the Contractor shall deliver the Unfinished Equipment and oblige any third party in possession or custody of the Unfinished Equipment to deliver it on demand to the Buyer.

23.2 If the Contractor fails to deliver the Unfinished Equipment (or procure such delivery) within seven (7) days of any such notice, then in addition to any other remedies that may be available to the Buyer under the Contract or otherwise, the Contractor grants the Buyer a right of access to the Contractor's premises (and shall oblige any third party in possession or custody of the Unfinished Equipment to grant the Buyer a right of access in relation to any other premises where the Unfinished Equipment is being held) to uplift the Unfinished Equipment and thereafter the Buyer may itself, or employ others to, manufacture or complete the Unfinished Equipment so that it complies with the Contract.

23.3 The Contractor shall afford the Buyer all necessary assistance to enable the Buyer to exercise its rights hereunder, including any assistance required to identify the premises where the Unfinished Equipment is located, the owner of those premises and the exact location of the Unfinished Equipment in those premises. In addition, the Contractor authorises the Buyer to execute all documents (and undertake such other actions) as might be necessary to enable the Buyer to recover the Unfinished Equipment from any third party, as agent for the Contractor or otherwise.

23.4 The Contractor shall be liable to pay the Buyer for any Losses incurred in taking possession of and removing the Unfinished Equipment and having it manufactured or completed (and for any other Losses suffered or incurred in connection therewith) and the Buyer shall be entitled to retain any monies due or becoming due to the Contractor under this or any other Contract issued to the Contractor by the Buyer and apply the same in payment of any such Losses. If the Losses exceed the monies retained by the Buyer, the Contractor shall pay such excess to the Buyer upon the Buyer's first written demand.

23.5 Where the Buyer does take possession of the Unfinished Equipment as aforesaid, the Buyer shall pay the Contractor a fair price for the Unfinished Equipment, such price to be determined by the Buyer, acting reasonably, provided that in no circumstances shall the price of the Unfinished Equipment exceed the Price, after deducting any Losses that the Contractor is liable for pursuant to condition 23.4.

#### 24. THIRD PARTIES

A person who is not party to a Contract with the Buyer shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of such Contract. This condition does not affect any right or remedy of any person, which exists or is available otherwise than pursuant to that Act.



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#### 25. NOTICES

Any notice given by one party to the other in connection with the Contract must be in writing (excluding fax or email) and may be delivered personally or by pre-paid first class post and in the case of post will be deemed to have been given 2 Working Days after the date of posting if posted from the UK to an address within the UK and 7 Working Days after the date of posting in any other situation. Notices shall be delivered or sent to the address of the parties set out in the Order, or to any other address notified in writing by one party to the other for the purpose of receiving notices in connection with the Contract. Each party may specify by notice to the other a particular individual or office holder to whom any notices served on it are to be addressed, in which case a notice shall not be validly given unless so addressed. Unless otherwise notified, any notice issued to the Buyer in respect of the Contract must be marked for the attention of the buyer responsible for issuing the Order (as set out in the Order).

#### 26. SEVERANCE

If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be illegal, invalid or unenforceable, that provision (or part-provision) shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

#### 27. REMEDIES AND WAIVER

27.1 Any right or remedy that the Buyer has under this Contract is in addition to (and not in substitution of) the Buyer's remaining rights and remedies under this Contract and at law and any waiver by the Buyer of any right or remedy under this Contract or at law shall not operate to discharge or restrict its remaining rights as aforesaid.

27.2 Any single or partial exercise by the Buyer of any right or remedy provided under this Contract or at law shall not preclude or restrict the exercise of that, or any other right or remedy.

27.3 The Buyer's failure to exercise, or its delay in exercising, a right or remedy provided under this Contract or at law shall not constitute a waiver of that right or remedy, or of any other rights or remedies, nor shall it preclude or restrict the further exercise of that or any other right or remedy.

#### 28. ANTI-CORRUPTION

28.1 Contractor declares and undertakes that in relation to the performance of this Contract:

28.1.1 it has not offered or given, and will not offer or give, directly or indirectly, any bribe or other improper benefit or advantage, financial or otherwise, including gifts and hospitality (other than gifts and hospitality which are reasonable and proportionate), to any individual or organisation for the purpose of influencing or rewarding the improper performance of any function or activity by such individual or organisation or, without limitation to the foregoing, otherwise has not bribed and will not bribe another person in connection with the performance or proposed performance of any function or activity; or

28.1.2 it has not demanded or accepted, and will not demand or accept, directly or indirectly, any bribe or other improper benefit or advantage, financial or otherwise, including gifts and hospitality (other than gifts and hospitality which are reasonable and proportionate), for itself or any individual or organisation intending as a consequence to perform or procure the performance improperly of any function or activity or, without limitation to the foregoing, otherwise has not been and will not be bribed in connection with the performance or proposed performance of any function or activity; or

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- 28.1.3 it has not offered or given and will not offer or give any financial or other advantage, including excessive gifts and hospitality (other than gifts and hospitality which are reasonable and proportionate) to any public official wherever located (including, without limitation, any person who holds a legislative, administrative or judicial position in any country or territory or who exercises any public function on behalf of either that country or territory or any public agency or enterprise of that country or territory) with the intention of obtaining or retaining business or an advantage in the conduct of business; or
- 28.2 Contractor shall inform the Buyer in advance of any subcontractor, sub-agent, sub-representative, sub-consultant or any similar third party which the Contractor intends to use to perform or assist in the performance of this Agreement.
- 28.3 Contractor shall put in place and maintain adequate procedures to ensure that no person associated with the Contractor, being any person (including for these purposes any employee, sub-contractor, sub-agent, sub-representative, sub-consultant or subsidiary) who performs services for the Buyer, ("Associated Person") commits a Prohibited Act. Buyer shall be entitled to audit Contractor during normal working hours to ensure that this section is being complied with. Contractor will co-operate in any anti-corruption investigation undertaken by or on behalf of the Buyer
- 28.4 If the Contractor (or any Associated Person) commits any Prohibited Act or fails to comply with the section 28.3 above, then the Buyer shall be entitled to terminate this Contract with immediate effect by way of written notice.
- 28.5 Any termination of this Contract pursuant to section 28.4 shall be without prejudice to any right or remedy which has already accrued, or subsequently accrues, to the Buyer, Contractor shall not be entitled to payment of any compensation of any damages or nature whatsoever in the event the Buyer terminates this Contract, and shall forfeit any amounts otherwise owed to it pursuant to the Contract, at the time of termination.
- 28.6 Contractor shall at all times, during and after the term of this Agreement, on written demand indemnify the Buyer and keep the Buyer indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Buyer as a consequence of Contractor or an Associated Person committing a Prohibited Act or failure by Contractor to comply with the Anti-Corruption section.
- 28.7 For the purposes of this section, "**Prohibited Act**" shall mean any act as described in section 28.1.1 to 28.1.3 as written above.

### 29. LAW

The Contract shall be governed by the Laws of England. The Contractor and the Buyer shall submit to the exclusive jurisdiction of the English Courts.