SPECIALIST EQUIPMENT SOLUTIONS STANDARD TERMS AND CONDITIONS OF PURCHASE - 1858 Mar 2016

1. Definitions

In these Conditions: -
"Conditions" shall mean the terms and conditions contained herein.
"Contract" shall mean these Conditions, the Purchase Order and the documents listed therein.
"Goods" shall mean the goods described in the Purchase Order (including any replaced goods and spare parts) and the term "Goods" shall whenever the context permits include any work or services performed under the Contract by the Supplier or any of its sub-contractors in connection with or incidental to the Goods or the Works.
"Owner" shall mean, where applicable, the person or persons or firm or company for whom the Purchaser has undertaken to execute the Works or any part thereof.
"Purchase Order" shall mean a purchase order document, together with any amendment thereto signed by or on behalf of the Purchaser, and issued to the Supplier.
"Purchaser" shall mean the company described as such in the Purchase Order.
"Supplier" shall mean the person or persons or firm or company to whom the Purchase Order is issued.
"Works" shall mean the works or project for and in connection with which the Goods are required.

2. Pricing and payment

(a) The Contract price of the Goods shall be as stated in the Purchase Order and except as otherwise agreed in writing between the parties shall be the total compensation payable to the Supplier under the Contract.

(b) Unless otherwise agreed in writing by the Purchaser, the Contract price shall include as appropriate (i) secure and proper packaging acceptable to the Purchaser and (ii) the cost of delivery to the address specified under Clause 4 hereof.

(c) Where the supply of the Goods is subject to the addition of Value Added Tax or other sales tax, the price of the Goods and the amount of Value Added Tax or other sales tax shall be stated separately.

(d) The Purchaser reserves the right to set off any sums in respect of which the Supplier may be indebted or in default to the Purchaser whether or not in connection with the sale or supply of the Goods.

(e) Unless the Purchase Order otherwise provides, the Supplier shall not invoice the Purchaser until performance of this Contract has been completed.

(f) Unless the Purchase Order otherwise provides, payment of amounts correctly invoiced by the Supplier shall, subject to sub-clauses (d) and (g) of this Clause, be made by the end of the month following the month in which the correctly prepared and adequately supported invoice is received, which shall be the due date for payment.

(g) No payment made by the Purchaser shall in any way be construed as acceptance of any of the Goods supplied or work or services performed by the Supplier or any of its sub-contractors and no payment shall in any way impair or restrict any rights or remedies the Purchaser may have under the Contract or otherwise for and in connection with the supply of the Goods and/or the performance of work or services under the Contract by the Supplier or any of its sub-contractors.

3. Interest on Late Payments

(a) Where payments are not made by the Purchaser in accordance with Clause 2 (f) interest may be paid on any late payments.

(b) Subject to Sub-clause (a) late payments from the date the invoice is due for payment to the date when payment is made will be charged at a rate of 1% above the Bank of England base rate.

4. Delivery

(a) The Goods shall be securely and properly packed by the Supplier and, if applicable, in accordance with any instructions given by the Purchaser and delivered to the address specified on the Purchase Order (hereinafter called the "Place of Delivery"). The Supplier shall give reasonable notice to the Purchaser of the time of delivery.

(b) It is a condition of the Contract that the Supplier shall, subject to the provisions of Clauses 6, 7 and 16 hereof, deliver the Goods at the date and/or within the time or period stated in the Purchase Order.

(c) Subject to Sub-clause (b) above, the Supplier shall give the Purchaser immediate notice in writing if any delay is foreseen, including details of the cause of such delay. The parties shall then endeavour to find a solution and the Supplier shall take all reasonable steps to eliminate such delay. The delivery date(s) shall only be extended to the extent that the Supplier is delayed in the performance of its obligations to supply the Goods by one of the following events:
(i) a wrongful act, omission, default, breach or other act of prevention by the Purchaser; or (ii) the execution of any change in accordance with Clause 7 of these Conditions; or (iii) the occurrence of a Force Majeure event in accordance with Clause 16(b) of these Conditions.

The Supplier shall mitigate the effects of any delay to the progress of the Goods irrespective of cause.

(d) Provided notice is given in accordance with Sub-clause (c) above, in respect of an allowable event, the Purchaser shall grant such extension of any date or period specified in the Contract as shall, in its opinion, be fair and reasonable.

(e) Without prejudice to any of the Supplier's obligations under the Contract the Supplier and its sub-contractors shall at all times allow persons duly authorised by the Purchaser to enter upon the premises where the Goods or any part thereof is being manufactured or any work in connection therewith is being carried out and shall provide such programmes, schedules, reports and other information as the Purchaser may require to monitor the progress of the Goods and to satisfy the Purchaser that all practicable measures have been and are being taken to meet the due date and/or time of delivery.

(f) Delivery in instalments or separate consignments shall be permitted only with the prior consent in writing of the Purchaser and only in accordance with the terms of such consent, and such permission, if given shall not entitle the Supplier to claim payment prior to delivery of the whole of the Goods, unless otherwise expressly agreed in writing by the Purchaser.

(g) The Purchaser shall have the right to instruct the Supplier to accelerate completion and delivery of the Goods within limits of practicality in order to cover all or part of any delay in respect of which the Supplier would otherwise have been entitled to a revision to the delivery date. The Supplier shall be entitled to a fair and reasonable adjustment to the Contract price in respect of any such instruction. Any extension granted under Sub-clause (d) shall take into account all relevant factors including any acceleration instructed by the Purchaser to overcome all or part of any delay.

5. Risk and title

(a) Under no circumstances shall the risk of damage to or loss or destruction of the Goods pass to the Purchaser prior to delivery of the Goods to the Place of Delivery.

(b) Title in the Goods or any part thereof shall pass to the Purchaser or Owner on their being appropriated to the Contract or on delivery of or on payment for the Goods or any such part whichever is the sooner. Any Goods for which the Purchaser has paid but which have not been delivered shall be clearly identified as the property of the Purchaser and stored in safe and suitable conditions and in accordance with any instructions given by the Purchaser.

(c) Where the Purchaser or the Owner for the purposes of the Contract issues materials or other items free of charge to the Supplier, such materials and other items shall be and remain the property of the Purchaser or the Owner as the case may be and shall be used by the Supplier solely in connection with the Contract. The Supplier shall, (unless within three working days from receipt thereof the Supplier notifies the Purchaser in writing to the contrary setting out appropriate details), be deemed to have satisfied itself as to the suitability of such materials and other items for their intended use and to have received same in good order and condition and in the quantities specified in the Contract. The Supplier shall thereafter be responsible for and accountable to the Purchaser for any loss of or damage thereto (including without limitation any waste thereof arising from any fault or neglect of the Supplier) until safe delivery of the completed Goods incorporating the said materials and/or other items is effected in accordance with Clause 4 hereof and any scrap or surplus arising from free-issue materials and/or other items as the Purchaser may at its option have decided and instructed the Supplier is/are (i) safely delivered with the Goods as aforesaid or (ii) sold by the Supplier by competitive tender and the amount so obtained paid or credited to the Purchaser.

6. Storage

(a) The Purchaser shall store the Goods at the Place of Delivery in accordance with such storage requirements as included in the Contract. Where the Contract is silent on storage requirements for the Goods then the Supplier warrants that the Goods may be stored without deterioration in the open on the ground whilst in the condition general to the Place of Delivery.

(b) If the Purchaser is not able to accept delivery of the Goods on the due date:
(i) the Supplier shall at its own risk, (but subject to reimbursement as provided in Sub-clause (iii) of this Clause) at the Purchaser's request, store the Goods at suitable premises, advising the Purchaser beforehand of the particulars of such proposed storage.
(ii) Unless notified otherwise by the Purchaser in writing, the Supplier shall insure the Goods for their full replacement value on "all risks" terms acceptable to the Purchaser in the joint names of the Supplier and the Purchaser and shall notify the Purchaser of such insurance cover.
(iii) Subject to receiving a certificate of insurance in a form acceptable to the Purchaser, the Purchaser shall reimburse the Supplier in respect of all reasonable storage charges and insurance premiums so incurred or paid.

7. Variations

(a) The Supplier shall not make any variations in the design, materials or method of manufacture of the Goods, nor substitute other parts or fitments for any proprietary or special parts or fitments ordered by the Purchaser without the prior written consent of the Purchaser.

(b) If the Purchaser refuses its consent under Sub-clause (a) above, and the Supplier is for any reason unable to perform the Contract without making the variation or substitution as requested the Purchaser may terminate the Contract, or any part thereof, in accordance with the provisions of Clause 13(b)(ii) hereof.

(c) Where the Contract or any part thereof is terminated under Sub-clause (b) above, any payments already made by the Purchaser shall be returned to the Purchaser.

(d) The Purchaser shall have the right, at any time during the performance of the Contract, by notice in writing to direct the Supplier to add to or omit, or otherwise vary the Goods (including without limitation any required changes in any drawings, specifications, instructions or directions) and the Supplier shall carry out such variations and be bound by the same terms and conditions so far as applicable, as though the said variations were stated in the Contract.

(e) Any adjustment to the Contract price occasioned by any variation shall be ascertained and determined at the same level of pricing as that stated in the Purchase Order. The Supplier shall within five working days from receipt of the Purchaser's direction and if that direction so instructs prior to proceeding with the required variation advise the Purchaser in writing of its estimate of the amount of any such adjustment to the Contract price.

(f) If, in the opinion of the Supplier any such direction is likely to prevent the Supplier from fulfilling any of its obligations under the Contract, the Supplier shall within five working days from the receipt of the Purchaser's direction so notify the Purchaser and the Purchaser shall decide whether or not the same shall be carried out and shall confirm its direction in writing and modify the said obligations to such an extent as in the Purchaser's opinion may be justified. Until the Purchaser so confirms its instructions they shall be deemed not to have been given. If the Supplier fails to notify the Purchaser as aforesaid then the Supplier shall forfeit any right to modification of any of its obligations under the Contract by reason of or in connection with the aforementioned Purchaser's direction.

(g) Variations shall be confirmed by amendment to the Purchase Order, signed by or on behalf of the Purchaser and issued to the Supplier.

(h) The Supplier shall be deemed to have full knowledge and to have made full allowance in respect of all matters whatsoever (including without limitation any local conditions) that may be relevant to the proper performance of its obligations under the Contract. The Supplier shall in no event be entitled to any additional compensation or any modification to any of its obligations under the Contract by reason of or in connection with any failure on its part under this Sub-clause 7(h).

8. Quality

(a) (i) All Goods (including raw materials and unfinished goods) shall be provided and/or made in a professional manner using all due care and skill and shall, on delivery to the Purchaser, be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended), fit for any purpose held out by the Supplier or made known to the Supplier by the Purchaser and in accordance with the Purchaser's specifications, and of first class materials, workmanship and design and to the satisfaction of the Purchaser and the Owner. (ii) All Goods shall comply in all respects with the terms of the Contract and all warranties or representations given or made on behalf of the Supplier at law. For the avoidance of doubt any express warranty or guarantee given by the Supplier shall extend to parts and labour.

(b) The Supplier shall satisfy itself that it understands the Purchaser's requirements in order to comply with the obligations contained in Sub-clause (a) above and also to prevent delay caused by any work which may be necessary to meet the Purchaser's requirements. The cost of any such work shall be borne by the Supplier.

(c) For the purpose of satisfying the Purchaser that the obligations contained herein are being observed, the Supplier and its sub-contractors shall at all times allow persons duly authorised by the Purchaser to make any inspections or tests which the Purchaser may require and/or witness any inspections or tests carried out by the Supplier pursuant to Sub-clause (e) of this Clause and shall afford to the Purchaser all reasonable facilities and assistance which shall be free of cost to the Purchaser unless specifically agreed in writing to the contrary.

(d) The Supplier shall operate a quality management system that either meets the requirements or is certified as meeting the requirements of BE EN ISO 9001 or other equivalent standards.

(e) Without prejudice to the provisions of Sub-clause (c) of this Clause, the Supplier shall at its own expense carry out such inspections and tests of the Goods as may be required for the purposes of ensuring that the Goods are (i) safe and without risks to health when properly used and (ii) in full compliance with the Contract.

9. Defects

(a) If, on inspection or test, (whether at any time prior to or after delivery) in manufacture or use, any Goods are found to be faulty in quality, damaged, defective, or not to comply with these Conditions (including Goods damaged in transit), the Purchaser may, at its option, (i) reject the whole or any part of the Goods in which event any payment previously made therefor shall be refunded to the Purchaser or (ii) require the Supplier at its own cost either to replace the Goods or to rectify any defect or (iii) undertake or procure at the risk and expense of the Supplier the replacement of the Goods or the rectification of any defect. Warranties and guarantees (Clause 8(a)) shall in respect of goods replaced and rectified as aforesaid be renewed from the dates it replaced or rectified goods are put into use by the owner.

(b) In addition to its remedies under Sub-clause (a) above the Purchaser shall be indemnified by the Supplier against all loss, damages, costs, charges, expenses or claims (including without limitation any claims by third parties) arising by reason of any failure of the Goods to comply with Clause 8(a) or any other terms of these Conditions whether express or implied by statute, common law, custom or otherwise or by reason of any act or omission of the Supplier, its servants, agents or sub-contractors in the performance of the Contract.

(c) Where the Purchaser requires the Supplier to rectify a defect: (i) the cost of collecting the Goods from and returning them to the Purchaser shall be borne by the Supplier; (ii) the cost of any additional inspection or testing of the replaced or repaired Goods and the cost of any further inspection or testing of other Goods as may be reasonably required by the Purchaser having due regard to the nature of the defect found in the Goods being replaced or repaired shall be borne by the Supplier; and (iii) the Supplier shall pay to the Purchaser a sum equal to the cost of any additional insurance considered necessary by the Purchaser.

(d) Any inspection, test, checking or approval by or on behalf of the Purchaser (or any failure to inspect, test, check, approve or make any complaint to the Supplier), shall in no event be construed as acceptance of any of the Goods supplied or work or services performed by the Supplier or any of its sub-contractors and shall in no way relieve the Supplier from any obligation or liability under the Contract or otherwise.

10. Assignment and sub-contracting

(a) The Supplier shall not sub-contract or assign the whole or any part of the Contract or the benefit thereof without the written consent of the Purchaser. Any consent given by the Purchaser under the foregoing provisions of this Sub-clause shall not relieve the Supplier from any obligation or liability under the Contract.

(b) When the Purchaser has consented to the placing of sub-contracts unpriced copies of each sub-contract or sub-order shall be sent to the Purchaser immediately they are issued unless the Purchaser has specifically requested or approved in writing otherwise.

(c) The Purchaser shall without consent from the Supplier have the right to assign the whole or any part of the Contract or the benefit or burden thereof to any of its parent, subsidiary or associated companies, or to the Owner or any of its parent, subsidiary or associated companies and, with the Supplier's written consent, which shall not be unreasonably withheld, to any other party.

11. Health and safety

(a) The attention of the Supplier is drawn to the obligations imposed by the Health and Safety at Work etc. Act 1974, and the Control of Substances Hazardous to Health 2002 (COSHH) on designers, manufacturers, importers, suppliers, erectors and installers of articles and substances for use at work to ensure, so far as is reasonably practicable, that such articles and substances are so designed, constructed or installed so as to be without risks to health at all times when they are being set, used, cleaned, maintained, handled, processed, stored or transported.
(b) Where by reason of its obligations under the said Act or regulations or any modification or re-enactment thereof or otherwise the Supplier has carried out or arranged for the carrying out of testing and examination of Goods to be sold hereunder for the purpose of ensuring that they are safe and without risks to health at the times mentioned above, the Supplier shall provide the Purchaser where appropriate on or before delivery of the Goods with proper documented results of such tests or examinations or, at the Purchaser's direction issued by a duly qualified and authorised person that the tests and examinations proved satisfactory.

(c) Without prejudice to the obligation contained in Sub-clause (b) above, on or before delivery of the Goods to the Purchaser, the Supplier shall provide to the Purchaser in connection with the Goods information about the use for which such Goods have been designed and tested, and about any conditions necessary to ensure that when installed, commissioned and put to use the Goods will be safe and without risks to health.

(d) Nothing contained in the foregoing provisions of this Clause shall be construed as relieving the Supplier or in any way detracting from any obligation or liability the Supplier may have under the Health and Safety at Work etc. Act 1974 or any modification or re-enactment thereof, or under any other statute, statutory instrument or regulation applicable to the Goods and the use thereof.

(e) Without prejudice to the generality of the foregoing in the event that the Supplier is required to supply personnel to perform any services of whatsoever nature at the site or a location other than the Supplier's place of business the Supplier hereby warrants and represents absolutely that all such personnel shall be in a good and sufficient state of health so as to perform such services without hazard to others.
(f) Where in the performance of the Supplier's obligations under this Contract the Supplier, its sub-contractors, tradesmen or artisans intend either to supply to the Purchaser, or to use any product which may or does contain a substance or substances which is or are hazardous to health within the meaning of Regulation 2(1) Control of Substances Hazardous to Health Regulations 2002 (or any amendment thereto), the Supplier shall supply full details both of such product and such substance in duplicate forthwith.

In supplying such details the Supplier will include in relation to both the product and the substance, without limitation, details of any assessment or monitoring which has been carried out and any data concerned with information or training.

The Supplier shall in addition supply promptly, but no later than seven days following the Purchaser's written request, any other supporting documentation or information relating to the product which the Purchaser may reasonably request.

In considering whether any product contains a substance which falls within the above Regulations, the Supplier shall include any substance which may be comprised in the product and which may be released either by cutting, grinding, spreading or burning the product or by mixing or using the product with other products or by any other means.

12. Suspension

The Purchaser shall, by notice in writing to the Supplier, be entitled to suspend the Contract or any part thereof. If the Supplier shall be delayed in the performance of any of its obligations under the Contract by any suspension order (other than a suspension order given by reason of the Supplier's own breach of the Contract) then any additional cost or expense directly and unavoidably incurred by the Supplier as a result of such order shall be added to the Contract price. The Purchaser, however, shall in no event be liable to the Supplier for any loss of profit, loss of use or loss of trading revenue, whether arising in connection with or as a result of such suspension or otherwise.

13. Termination of the Contract

(a) In addition and without prejudice to the Purchaser's right to terminate the Contract or any part thereof under any other provision in these Conditions, the Purchaser shall have the right at its sole discretion to terminate the Contract or any part thereof at any time prior to discharge of the Contract by performance by giving notice in writing to the Supplier under this Sub-clause.

(b) The Purchaser shall have the right to terminate the Contract or any part thereof forthwith: (i) if the Supplier shall be in breach of such obligations as are set out in these Conditions or in the Purchase Order and (if the breach is capable of being remedied) shall not have remedied such breach to the complete satisfaction of the Purchaser within seven days (or within such longer period as the Purchaser may have agreed in writing), after notice thereof in writing; or (ii) in the event that the Supplier, not being a body corporate, becomes bankrupt, or compounds or makes any arrangements with its creditors, or commits any act of bankruptcy, or where the Supplier, being a body corporate, goes into liquidation, whether compulsory or voluntary (save for the purpose of reconstruction or amalgamation while solvent), or has a receiver and/or manager appointed of its undertaking or assets or any part thereof.

(c) Termination of this Contract or any part thereof for any reason shall be without prejudice to the rights and remedies of either party hereto accrued up to and including the date of such termination.

(d) Unless the Purchaser's termination notice otherwise provides, upon receipt of such notice the Supplier shall promptly cease any further work (except on any part not terminated by the Purchaser) and shall instruct its sub-contractors if any, to similarly do so, and shall comply with all reasonable instructions from the Purchaser in regard to termination.

(e) The Supplier hereby agrees that notwithstanding anything contained elsewhere in the Contract to the contrary, whether expressly or by implication, the Supplier's sole remedy in the event of termination pursuant to Sub-clause (a) of this Clause is to receive payment from the Purchaser of (i) such part of the Contract price as represents the value of Goods (if any) completed, delivered and accepted in accordance with the Contract prior to the date of receipt of such termination notice, less any monies previously received under the Contract (ii) any direct costs and expenses reasonably and necessarily incurred by the Supplier in complying with the provisions of sub-clause (d) of this Clause as substantiated to and agreed by the Purchaser or (iii) in lieu of (i) and (ii) such sum as the Purchaser and the Supplier may agree as full and final settlement. The Purchaser, however, shall in no event be liable to the Supplier for any loss of profits, loss of use or loss of trading revenue, whether arising in connection with or as a result of such termination or otherwise.

14. Patents and Copyrights

(a) The Supplier warrants that the supply by the Supplier and the use by the Purchaser or Owner or any other user of the Goods does not and will not infringe the intellectual property rights of any third party, whether in the form of letters patent, trade or service marks, registered designs, unregistered designs, copyright or any other similar right and the Supplier shall indemnify the Purchaser and the Owner against all claims, losses, demands, damages, penalties, costs, expenses or liability arising as a result of the breach of this warranty by the Supplier (including legal fees and other costs of defending an action).

(b) The Supplier shall grant a fully-paid, non-exclusive, royalty-free, perpetual, transferable, irrevocable right and license to Purchaser and the Owner to use for the purposes of the Works any and all intellectual property rights including software, models, designs, drawings, documents, and inventions of Supplier in connection with the Goods.

15. Confidentiality

(a) Any items provided to the Supplier by the Purchaser or the Owner (including without prejudice to the generality of the foregoing, specifications, plans, drawings, designs, samples, patterns, dies, moulds, gauges, equipment, material and computer programmes, whether by way of free issue or not) for use in connection with the Contract, whether for incorporation in the Goods or not, shall be and remain the property of the Purchaser or the Owner, as the case may be, and the Supplier shall (i) bear the risk of loss of or damage to such items and be generally responsible and accountable to the Purchaser therefor in accordance with Clause 5(c) hereof; (ii) affix and keep affixed a clear sign upon each such item indicating that it is the property of the Purchaser or the property of the Owner, as the case may be; (iii) not without the Purchaser's prior written consent use or allow the use of any such items for any purpose whatsoever, other than the supply of the Goods and the carrying out of any associated work under the Contract; (iv) not without the Purchaser's prior written consent disclose or allow the disclosure of any such item or information relating thereto to any person whatsoever save for the purposes of the proper performance of the obligations owed to the Purchaser by the Supplier under the Contract; and (v) upon completion by performance or termination of the Contract, or earlier at the Purchaser's request, return to the Purchaser all such items.
(b) The foregoing restrictions shall not apply to any information disclosed by Purchaser or the Owner to the Supplier which: (i) is or later becomes public knowledge other than by breach of the foregoing paragraph; or (ii) is in the Supplier's possession with the full right to disclose prior to its receipt; or (iii) is independently received by the Supplier from a third party having the full right to disclose; or (iv) is required to be disclosed by operation of law or pursuant to legal proceedings and the Supplier gives prior written notice to the Purchaser of its obligation to disclose.

(c) The Supplier shall not publish any information in connection with the Works, or the Contract, or the Goods supplied or to be supplied hereunder without the prior written consent of the Purchaser.

16. Force Majeure

(a) If either party is prevented or hindered from carrying out its obligations hereunder by Force Majeure (as defined in Sub-clause (b) of this Clause), then the performance of such obligations shall be suspended for such time as the Force Majeure circumstances last and the party affected shall not be liable for any loss or damage caused to the other by the delay, but shall however resume performance of the suspended obligations as soon as the Force Majeure circumstances cease to exist unless the Contract has prior thereto been terminated by the Purchaser pursuant to Sub-clause (c) of this Clause.

(b) "Force Majeure" shall, for the purpose of this Contract mean any circumstances which were not reasonably foreseeable and which were beyond the control of the Purchaser or the Supplier or the Supplier's sub-contractors and which by the exercise of reasonable diligence the Purchaser or the Supplier or the Supplier's sub-contractors would have been unable to prevent or provide against and shall in any event be limited solely to Act of God or of the Public Enemy, war, rebellion, civil disturbance, compliance with any order, act or regulation of any government or government agency.

(c) In the case of Force Majeure extending beyond a reasonable time (which term for the purposes of this Contract shall in any event include any period in excess of sixty days) the Purchaser may by notice in writing to the Supplier terminate the Contract, with no liability on either party for loss or damage thereby occasioned.

17. Labelling and instructions

(a) The Supplier warrants that the design, construction, quality, packaging and labelling of the Goods shall comply in all respects with any requirements of any statute, order or other instrument having the force of law, which may be in force at the times when the Goods are supplied.

(b) All marking and labelling of the Goods (i) necessary to ensure safe and proper handling, processing, storage and transport and (ii) as particularly required by the Purchaser shall be carried out by the Supplier.

(c) Hazardous goods must have prominent warnings in English and any other language as may be specified in the Purchase Order and/or are required to comply with applicable laws on all packing and documents.

18. Liens and claims

The Supplier shall indemnify and hold the Purchaser and the Owner harmless from all liens and other encumbrances against the Goods or any property belonging to or in the possession of the Purchaser or the Owner on account of debts or claims alleged to be due from the Supplier or its sub-contractors to any person, including sub-contractors, and on behalf of the Purchaser or the Owner and in the Purchaser's or the Owner's name, as the case may be, shall defend at its own expense any claim or litigation in connection therewith and shall follow any reasonable instructions issued by the Purchaser or the Owner in connection therewith.

19. Late delivery

If the Goods or any part thereof are not delivered by the due date and/or time, the Purchaser may at its option and without prejudice to any other rights or remedies it may have; either:

(a) refuse to take delivery of or reject the Goods or any part thereof as it may choose, and the Purchaser shall have no liability for the payment thereof, or,

(b) take delivery of and subject to Clause 9 hereof keep the Goods or any part thereof as it may choose, in which event the Supplier shall pay to the Purchaser such Liquidated Damages, if any, as may be specified in the Purchase Order or if no Liquidated Damages are specified in the Purchase Order, such sum as the Purchaser may claim for any costs, losses, damages and expenses suffered or incurred by the Purchaser as a result of or in connection with such late delivery.

20. Insurance

(a) The Supplier shall at its own expense effect and maintain throughout the performance of the Contract (i) such insurances as the Supplier may be required to effect and maintain by law; (ii) "all risks" insurance for the full replacement value of the Goods and other items while they remain at the Supplier's risk; (iii) insurance in respect of liability for death of or injury to third parties or loss of or damage to third party property for an amount of not less than £10,000,000, any one occurrence, unlimited in the aggregate; and (iv) adequate insurance for such other of the Supplier's insurable obligations under the Contract (including in particular its obligations under Clauses 8 and 9) as a prudent and competent person entering into the Contract would effect and maintain.

(b) The Supplier shall provide the Purchaser upon request with details of all insurance cover for the time being held by it in relation to the Goods and the Supplier's obligations under the Contract.

21. No waivers

No failure on the part of the Purchaser at any time or from time to time to enforce or to require the strict adherence and performance of any of the terms, Conditions and provisions of the Contract shall constitute a waiver of such terms, Conditions or provisions and/or affect or impair such terms, Conditions or provisions in any way or the right of the Purchaser at any time to avail itself of such remedies as it may have for each and every breach of such terms, Conditions or provisions.

22. Ethical conduct

The Purchaser's Code of Business Conduct (Code) is a set of principles to guide our business and the work on its behalf and under its direction in the conduct of their day-to-day business. The Purchaser's Supply Chain Code of Business Conduct (Supply Chain Code) is aligned to the Code. Together they ensure that the Purchaser's supply chain plays an active role in helping it achieve its vision, behaves in a way which is consistent with its values and so helps the Purchaser sustain the respect and trust of all of its stakeholders. The Supplier represents that, in connection with this Contract, it has, and covenants that it has, read, understood and will comply with the Supply Chain Code (and any subsequent revisions thereto which will be available at www.amecfw.com/supply-chain-cobc.htm). The Supplier undertakes to promptly (and in any event within 7 days) notify the Purchaser of any alleged potential, suspected or actual breach(es) of the law, the Code or Supply Chain Code via the Supply Chain Management page on the Amec Foster Wheeler website (www.amecfw.com/supply-chain-cobc.htm) and to act in such a way as to uphold the Purchaser's good name and reputation and not to do or attempt to do any act or thing which is intended to and/or which in fact causes any damage to or brings discredit upon the Purchaser.

23. Conditions

No servant or agent of the Purchaser has any authority to agree to any variation of or addition to these Conditions, unless such variation or addition is expressed in writing and specifically agreed and signed on behalf of the Purchaser by a director or other person duly authorised by the Purchaser. Subject to the foregoing provisions of this Clause, nothing contained in any document issued by the Supplier (irrespective of whether same is referred to in the Purchase Order) shall in any way modify or vary these Conditions.

24. Audit

(a) During the course of the supply of Goods and for a period ending six (6) years after completion, the Purchaser or its duly authorised representative shall have the right to audit at all reasonable times and, upon request, take copies of all of the Supplier's records (including data stored on computers), books, personnel records, accounts, correspondence, memoranda, receipts, vouchers and other papers of every kind relating to:
(i) all invoiced charges made by the Supplier to the Purchaser; and (ii) any provision of the Purchase Order under which the Supplier has obligations the performance of which is capable of being verified by audit.

(b) In this respect the Purchaser shall not generally be entitled to investigate the makeup of rates and lump sums included in the Purchase Order except to the extent necessary for the proper evaluation of any variations.

(c) The Supplier shall co-operate fully with the Purchaser and/or its representatives in the carrying out of any audit required by the Purchaser. The Purchaser shall conduct any audit in a manner which will keep to a reasonable minimum any inconvenience to the Supplier.

(d) The Supplier shall obtain equivalent rights of audit to those specified above from all sub-contractors and shall cause such rights to extend to the Purchaser.

(e) The Purchaser and the Supplier shall keep all documents and data, including that which is stored on computers, related to this Contract for a period of six (6) years after the date of completion of the Works.

25. Unloading

The Purchaser shall make available to the Supplier such assistance in unloading as has been included in the Contract and is confirmed by the Supplier to the Purchaser in writing seven days prior to delivery of the Goods. The Goods shall not be treated as having been delivered to the Place of Delivery until they are safely unloaded and accepted by the Purchaser.

26. Export Control Compliance

(a) The Supplier acknowledges that certain portions of the Goods, including without limitation, technology, goods, software, services, or commodities provided under the Purchase Order, may be subject to laws or regulations restricting their export, re-export, transfer, or release to certain governments, legal entities, or individuals or to certain destinations.

(b) With respect to any export, re-export, transfer, or release of any such items otherwise permitted under the Purchase Order to personnel of Supplier or Purchaser or to third parties, Supplier will comply with, and shall cause its sub-contractors to comply, with all applicable export controls laws and regulations.

27. Third Party Rights

No provision of this Agreement is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party or any liability whatsoever on any third party.

28. Entirety of Agreement

The express terms of this Contract shall constitute the entire agreement between the Supplier and the Purchaser on the subject matter hereof and shall cancel and supersede all prior written or oral representations or understandings between the Supplier and the Purchaser other than as expressly included in the Contract.

29. Legal construction

This Contract, and any issues or disputes arising out of or in connection with it (whether such disputes are contractual or non-contractual in nature, such as claims in tort, breach of statute or regulation, or otherwise) shall be governed by and construed in accordance with English law and the parties hereby irrevocably and unconditionally accept the exclusive jurisdiction of the courts of England. The language of this Contract is English.

30. Surviving Clauses

All provisions necessarily requiring survival beyond completion or earlier termination of the Contract including but not limited to those relating to Quality (Clause 8), Defects (Clause 9), Patents and Copyrights (Clause 14), Confidentiality (Clause 15), Liens and claims (Clause 18), Ethical Conduct (Clause 22), Audit (Clause 24), Export Control Compliance (Clause 26) and this Clause 30 shall remain in effect notwithstanding any discharge by performance, termination or suspension of this Contract, howsoever arising.