Assentech Sales Limited - Terms and Conditions

Agreement for the Supply of Goods and Services as Set Out Below

1. Assentech Sales Limited a Company registered in England and Wales under company number 6746170 whose registered office is Mount Pleasant Farm, Gorran, St Austell, Cornwall, United Kingdom, PL26 6LR.
2. Assentech Sales Limited operates from business premises at Glenview Workshops, Trispen, Truro, Cornwall, United Kingdom, TR4 9AU.

BACKGROUND:

(A) Assentech Sales Limited is a supplier of equipment, services and technical expertise in the fields of Tank Storage, Process Safety and Fluid Transfer.

(B) Assentech Sales Limited is willing to provide the Goods/Services (as defined below) and the Customer is willing to appoint the Supplier to provide the Goods/Services in accordance with the provisions of this Agreement.

SCHEDULE OF GOODS/SERVICES:

Part 1: Specification of Goods/Services

Part 2: Fees

I confirm that I have read, understood, and agree to be bound by the terms and conditions set out below. Unless you, the Customer, notify Assentech in writing to the contrary prior to placing an order, these terms and conditions shall be deemed accepted and binding upon you.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.7.

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from the Supplier.

Deliverables: the deliverables set out in the Order.

Delivery Location: has the meaning set out in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 15

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification below.

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer.

Supplier: Assentech Sales Limited registered in England and Wales with company number 6746170.

Supplier Materials: has the meaning set out in clause 8.1(f).

1.2 **Construction**. In these Conditions, the following rules apply :

(a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

(b) a reference to a party includes its personal representatives, successors or permitted assigns;

(c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(d) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(e) a reference to **writing** or **written** includes faxes.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by any third party or the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures or those issued by third parties are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

2.7 In the event that any equipment is supplied for end-user applications within the nuclear industry, Assentech reserves the right to require the end user to formally confirm and accept the factory-specified terms, including indemnification against any risks arising from application failure.

2.8 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS

3.1 The Goods are described in the Goods Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

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

3.4 If the Customer intends to conduct specific testing on equipment or products supplied by Assentech, it is the Customer's responsibility to provide full clarity regarding these requirements at the RFQ (Request for Quotation) stage. This ensures that any extra or non-standard order criteria are included in the quotation and properly addressed during manufacturing. Any such requirements may incur additional costs, but the manufacturing factory will ensure the equipment meets the agreed test criteria to support the Customer's needs. Providing this information at the RFQ stage also allows Assentech to identify and submit any deviations from the specified requirements for the Customer's review and acceptance prior to order fulfilment. Failure to notify Assentech of such testing requirements at the RFQ stage will render the Customer liable for the full cost of the order, even if the products or equipment fail to meet any customer-specific testing conducted onsite after delivery.

3.5 Customer Responsibility for Suitability and Application. The Customer acknowledges that the selection of Goods appropriate for any given application is the sole responsibility of the Customer. Where the Supplier provides any product recommendation, guidance or suggestion, whether verbally or in writing, this is

provided in good faith based solely on information supplied by the Customer and does not constitute formal technical or engineering advice. Any such guidance is provided without charge and without warranty as to its accuracy or completeness. The Customer shall:
(a) independently verify, using suitably qualified personnel or a competent person, that any Goods ordered are fit for the intended application before placing an Order;
(b) satisfy itself that the Goods comply with all applicable health and safety legislation, industry standards, and regulatory requirements relevant to the application, including but not limited to requirements relating to hazardous substances, flammable or toxic materials, pressure systems, and fluid containment;
(c) ensure that any Goods supplied are installed, commissioned, operated and maintained in accordance with the manufacturer's instructions and all applicable regulations;
(d) accept full responsibility for the consequences of selecting Goods that are unsuitable for the intended application, whether or not a recommendation was made by the Supplier.
The Supplier shall have no liability for any loss, injury, damage, or consequential loss arising from the unsuitability of Goods for the Customer's intended application. Where formal technical selection advice is required, the Customer is directed to the Supplier's chargeable technical consultancy service.

4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

(a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(b) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

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

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.6 If the Customer fails to accept or take delivery of the Goods within 20 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the second

Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

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

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

4.8 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY OF GOODS

5.1 The Supplier is not the manufacturer of the goods and therefore the Customer will need to rely on the warranties given by the manufacturer in relation to the quality of the goods supplied.

5.2 If the Customer gives notice in writing within one month of delivery and within a reasonable time of discovery that some or all of the Goods do not comply with the manufacturers warranty or are defective;

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

(b) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, replace the defective Goods, or refund the price of the defective Goods in full.

c) the supplier will not reimburse customer for any labour costs associated with the removal, repair or installation of the damaged or defective Goods.

d) the supplier will not reimburse or replace any goods that have been damaged during transit on an Ex-works shipping basis.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the manufacturers warranty if:

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

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

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

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

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

(f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 If the Supplier, at its option, agrees to the Customer returning the goods in accordance with clause 5.2, the risk in the Goods remains with the Customer until the Supplier arranges replacement of the defective Goods, or refunds the price of the defective Goods in full.

5.5 In relation to bespoke Goods, if the Supplier, at its option, agrees to the Customer returning the goods in accordance with clause 5.2, the risk in the Goods

remains with the Customer until the Supplier arranges replacement of the defective Goods, or refunds a proportion of the price of the defective Goods.

5.6 The cost of returning the Goods to the Supplier in accordance with Clause 5.5 will be borne by the Customer.

6. TITLE AND RISK

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

6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

(a) the Goods; and

(b) any other goods that the Supplier has supplied to the Customer in respect of which payment has become due.

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

(a) hold the Goods on a fiduciary basis as the Supplier's bailee;

(b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

(c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

(e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.3(b) to clause 13.3(m); and

(f) give the Supplier such information relating to the Goods as the Supplier may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.3(b) to clause 13.3(m), or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. SUPPLY OF SERVICES

7.1 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

(a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;

(b) co-operate with the Supplier in all matters relating to the Services;

(c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;

(d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;

(e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

(f) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and

8.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and

(c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9. CHARGES AND PAYMENT

9.1 The price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.

9.2 The charges for Services shall be on a time and materials basis:

(a) the charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Order;

(b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;

(c) the Supplier shall be entitled to charge an overtime rate of 50 per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2(b); and

(d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

9.3 The Supplier reserves the right to:

(a) increase its standard daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase 3 months before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 8 weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving 4 written notice to the Customer; and

(b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

(i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

(iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.4 In respect of Goods, the Supplier shall issue a proforma invoice to the Customer following receipt of a Purchase Order. Customer orders will only be processed by Assentech when full payment of the proforma invoice has been paid. A 30 day credit term can sometimes be negotiated for repeat customers. The Supplier shall invoice the credit Customer on monthly in arrears basis as agreed in the original Contract.

9.5 The Customer shall pay each invoice submitted by the Supplier:

(a) Proforma invoice customers must pay immediately before their order will be processed. Customers with a 30 day credit term must pay within the given timescale from date of invoice,

(b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above Barclays Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

9.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

9.9 The price stated in the Supplier’s quotation, order acknowledgement or contract is based on the scope, information and requirements made known to the

Supplier at the time of quotation or order acceptance. Where the Customer subsequently requests, or where it becomes necessary to provide, additional documentation, technical support, compliance information, certification, declarations, factory liaison, supplier support, project administration, customer portal completion, data entry, document reformatting, bespoke paperwork, additional review time or other support not made clear to the Supplier at the quotation stage, the Supplier reserves the right to charge additional costs. This shall apply where such requirements place additional demand on the resources of the Supplier, the manufacturer, the factory, the Supplier's third party suppliers or any associated technical, administrative or compliance teams. The Supplier shall, where reasonably practicable, advise the Customer of such additional costs before carrying out the additional work. However, where work is required urgently, is necessary to fulfil the Order, or has already been incurred by the Supplier, manufacturer, factory or third party supplier, the Supplier reserves the right to recover those costs from the Customer.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

10.3 All Supplier Materials are the exclusive property of the Supplier.

11. CONFIDENTIALITY

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

12. LIMITATION OF LIABILITY:

12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

(d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

(e) defective products under the Consumer Protection Act 1987.

12.2 Subject to clause 12.1:

(a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract ; and

(b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £1,000,000.

12.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of the Contract.

13. TERMINATION

13.1 Without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than 2 months' written notice.

13.2 If the Customer cancels an order after a purchase order has been submitted, Assentech reserves the right to charge a cancellation fee. This fee may include, without limitation, any charges imposed by the manufacturer or supplier, as well as any costs already incurred by Assentech in connection with the order.

13.3 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 60 days after receipt of notice in writing to do so;

(b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

(c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

(e) the other party (being an individual) is the subject of a bankruptcy petition or order;

(f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

(h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

(i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to

which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.3(b) to clause 13.3(i) (inclusive);

(k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

(l) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

(m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.4 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

13.5 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.3(b) to clause 13.3(m), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

14. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

(a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

(c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

(d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

(e) the supplier reserves the right to charge reasonable costs incurred as a result of any design or consultancy work required to satisfy the scope of the project or order.

15. FORCE MAJEURE

15.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

15.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

15.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 12 weeks, the Supplier shall, without limiting its

other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

16. GENERAL

16.1 **Assignment and other dealings.**

(a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

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

16.2 **Notices.**

(a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

16.3 **Severance.**

(a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

(b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

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

16.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

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

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

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

16.9 construed in accordance with the law of England and Wales.

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