

STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND/OR SERVICES – Issue 10 (08/04/2016)

1. **Definitions and Interpretation**
 1.1 In these terms and conditions ("Conditions") the words and expressions below will have the following meanings: -
 1.1.1 **"Confidential Information"** any and all information acquired by the Supplier about the business of the Customer and/or given by the Customer to the Supplier and/or generated by the Supplier from such information which may include aspects of Customer Property;
"Contract" the agreement between the Customer and the Supplier for the sale and purchase of the Goods and/or Services incorporating these Conditions and the documents referred to in these Conditions;
"Control" as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly;
"Customer" Bulwell Precision Engineers Limited, a company registered in England and Wales with registered number 00568879 and whose registered address is c/o Nasmith Group Limited, Nasmith Building, Coventry Road, Exhall, Coventry, England CV7 9FT;
"Customer IPR" as defined in condition 10.2;
"Customer Property" designs, samples, drawings, technical data, specifications, raw materials, part manufactured products, tools, gauges, packaging materials and/or any other materials provided by the Customer and/or any jigs, tooling, equipment and/or other materials in respect of which the Customer has made a contribution to the costs of such items;
"Deliverables" the products of the Services in any media, including any documents, products and/or materials developed for the Customer as part of the Services;
"Goods" the goods which the Supplier is to supply to the Customer as agreed in the Contract and which may be described in the Order including any Deliverables;
"Intellectual Property Rights" patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, rights in confidential information and any other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of, such rights and all rights of action for infringement of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world;
"IPR Claim" as defined in condition 11.1;
"Liability" liability for actions, awards, costs, claims, damages, losses (including without limitation any direct or indirect consequential losses), demands, expenses, loss of profits, loss of reputation, judgments, penalties and proceedings and any other losses and/or liabilities;
"Operational Documents" any operational supply agreement between the parties and/or the Customer's operational documents referred to or set out in the Order;
"Order" the Customer's written instruction to supply the Goods and/or Services;
"Records" as defined in condition 12.1;
"Release Requirements" the release requirements (if any) specified or referred to in the Order and as may be further described in condition 4.10;
"Services" the services which the Supplier is to supply to the Customer (if any) as agreed in the Contract and which may be described in the Order, including the provision of any Deliverables;
"Specification" the relevant specification(s) referred to or set out in the Order;
"Supplier" the person to whom the Order is addressed; and
"Working Day" any day during the Customer's usual opening hours which is not a Saturday, Sunday or bank or public holiday in England.
 1.2 In these Conditions
 1.2.1 reference to 'writing' or similar expressions shall include reference to any communication effected by facsimile, electronic mail and/or any comparable means but shall not include communication by SMS or similar text messaging facilities;
 1.2.2 reference to a prohibition against doing any act or thing includes a reference to not permitting, suffering or condoning that act or thing to be done;
 1.2.3 use of words such as "including", "includes", "in particular" or similar terms are to be construed in each case as if the term "without limitation" is implied into the sentence incorporating these words.
 1.2.4 reference to a party includes that party's successors and permitted assigns;
 1.2.5 words indicating a person shall include bodies of persons whether corporate or incorporate and vice versa;
 1.2.6 reference to any statute or statutory provision includes a reference to the same as from time to time amended, extended, re-enacted or consolidated and all subordinate legislation made pursuant to it and including any other similar legislation in any other jurisdiction.
 1.3 The phrase "and/or" means either of the alternatives and both of the alternatives as the case may be.
 1.4 Where a party incurs an obligation under these Conditions and such obligation is created by the use of words such as "shall", "will", "undertakes to", "must", "agrees to" or any other verb which implies that a party has so incurred such obligation, it is agreed that all obligations shall not be distinguishable from one another by reason only of the verb used when creating such obligation.
 1.5 Any reference to "procure" or "ensure" shall create a primary obligation and not a secondary obligation or guarantee.
 2. **Application**
 2.1 These Conditions and any terms and conditions stated on any Order or contained in any document referred to in these Conditions are the only terms and conditions upon which the Customer shall purchase Goods and/or Services and shall apply to the exclusion of all other terms and conditions including any terms or conditions specified or referred to in any document or materials (including any quotation and/or order acknowledgement form) issued by the Supplier.
 2.2 No terms or conditions submitted or referred to by the Supplier (whether before or after the date of the Order) in any documentation or orally shall change, modify, supplement, explain or form part of the Contract unless expressly agreed in writing by authorised representatives of the Customer.
 2.3 No variation to the Contract shall be binding unless in writing signed by an authorised representative of each party.
 2.4 Any advice or recommendation given by the Customer and/or its representatives in respect of the Goods and/or Services shall be without prejudice to the Customer's rights and remedies under the Contract and shall not in any way limit the Supplier's Liability under the Contract.
 2.5 Any error or omission in any offer, Order or other document, material or information issued by the Customer shall be subject to correction without any Liability on the part of the Customer.
 2.6 The Supplier agrees to supply the Goods and/or Services to the Customer in accordance with these Conditions in consideration of payment of the price by the Customer.
 2.7 Each Order shall be an offer by the Customer to purchase the Goods and/or Services subject to these Conditions and the documents referred to in these Conditions.
 2.8 The Contract will become legally binding only when the Supplier has accepted the Order. The Supplier will be deemed to have accepted the Order at the earlier of when the Supplier has notified the Customer in writing of its acceptance of the Order, when the Supplier is deemed to have accepted the Order in accordance with condition 2.9 or when by its actions the Supplier has commenced performance of the Order. The Customer may alter or withdraw any Order at any time for any reason prior to acceptance by the Supplier.
 2.9 Unless the Supplier notifies the Customer that it is unable to fulfil the Order within 7 days of the date of the Order the Supplier shall be deemed to have accepted the Order.
 2.10 Any forecasts provided by the Customer to the Supplier are indicative only, and do not constitute an offer by the Customer to purchase the forecasted Goods and/or Services and can be changed at any time without consultation with the Supplier. Notwithstanding any contrary provision in these Conditions, any Order marked for "visibility" shall not constitute an offer by the Customer to purchase Goods and/or Services and shall only constitute part of the Customer's indicative non-binding forecast.
 3. **Delivery and Performance**
 3.1 The Supplier shall fulfil each Contract strictly in accordance with the terms thereof. Time for delivery of the Goods and for performance of the Services shall be of the essence.
 3.2 If any Goods are delivered and/or any Services are performed by the Supplier in default of the terms of the Contract the Customer shall be entitled (but not obliged) to:
 3.2.1 refuse to accept the provision of any further Goods and/or Services by the Supplier and to require the immediate repayment by the Supplier of all sums previously paid by the Customer to the Supplier under the Contract; and/or
 3.2.2 to require the Supplier, without charge to the Customer, to carry out such additional work as is necessary to correct the Supplier's failure and/or at the Supplier's cost obtain replacement goods and/or services from a third party.
 3.3 The Goods shall be delivered to the delivery address on the delivery date (each as set out in the relevant Order).
 3.4 Each delivery of Goods and/or Services shall be properly and securely packed and delivered in accordance with the Release Requirements (if any).
 3.5 Each delivery of Goods and/or Services shall be accompanied by the documentation required under the Release Requirements (if any) and accompanied by an advice note stating the full description, weight, measure, order number, batch number and expiry date.
 3.6 If Goods are delivered before the delivery date specified in the Order then the Customer shall be entitled in its sole discretion to refuse to take delivery or charge for insurance and storage of Goods until the contractual date for delivery.
 3.7 No third party carrier (other than the Customer's distribution agent) engaged to deliver the Goods shall at any time be an agent of the Customer and accordingly the Supplier shall be liable to the Customer for the acts and omissions of all third party carriers engaged by the Supplier to deliver Goods to the Customer.
 3.8 The Customer shall not be obliged to return to or account to the Supplier for any packaging materials for Goods. The Customer may at its option provide packaging materials to the Supplier. The Supplier shall treat any packaging materials provided by the Customer as Customer Property.
 3.9 If the Customer agrees to accept delivery of Goods by instalments and to be invoiced for each instalment despatched, each instalment delivery shall nevertheless constitute part of one contract as recorded in the relevant Contract and shall not constitute separate contracts.
 3.10 Signature on behalf of the Customer of a delivery note or other document presented for signature on delivery or collection of Goods is evidence only of the number of pallets or packages received and not that the correct quantity or number of Goods have been delivered or that they otherwise meet the requirements of the Contract.
 4. **Performance and Quality**
 4.1 The Supplier shall provide the Goods and/or Services in all respects in accordance with:
 4.1.1 the Specification (if any);
 4.1.2 the Contract;
 4.1.3 the quality metrics in the Operational Documents (if any);
 4.1.4 the reasonable directions and/or instructions of the Customer;
 4.1.5 the Release Requirements (if any);
 4.1.6 a high level of skill and care and in a timely and prompt manner;
 4.1.7 all applicable legislation from time to time in force, and the Supplier shall notify the Customer as soon as it becomes aware of any changes in that legislation; and
 4.1.8 best practice prevailing in the Supplier's industry from time to time.
 4.2 Without limiting the Supplier's Liability and without prejudice to any rights or remedies of the Customer, the Supplier shall immediately notify the Customer in writing, if at any time:
 4.2.1 the Supplier becomes aware of any non-conformity of the Goods and/or Services with the Contract;
 4.2.2 there is a change of Control of the Supplier;
 4.2.3 in respect of the Goods, there is a change in the suppliers to the Supplier.
 4.3 The provisions of condition 4.2 shall survive termination of the Contract.
 4.4 The Supplier shall ensure that any non-conforming Goods and/or Services are quarantined and the Supplier shall not deliver such Goods and/or Services to the Customer unless the Customer agrees in writing that the Supplier can deliver the non-conforming Goods and/or Services after being notified in writing by the Supplier of each of the non-conformities. Any agreement by the Customer to the supply of non-conforming Goods and/or Services shall not in any way limit the Supplier's Liability and shall be without prejudice to any rights or remedies of the Customer under the Contract.
 4.5 The Supplier shall maintain each accreditation which it requires to supply the Goods and/or Services in accordance with the Release Requirements and, without limiting the Supplier's Liability and without prejudice to any rights or remedies of the Customer, the Supplier shall notify the Customer immediately if it loses any such accreditation and/or if any matter occurs, or the Supplier anticipates may occur, which may cause the Supplier to lose any such accreditation.
 4.6 The Supplier shall perform the Contract at the manufacturing location covered by the accreditation which it requires to supply the Goods and/or Services in accordance with the Release Requirements. The Supplier shall not perform the Contract at any other location without the Customer's prior written consent.
 4.7 Specific quality assurance requirements of the Customer (if any) in terms of the provision of pre-delivery testing certificates or compliance with specific quality standards in the production or supply of the Goods and/or Services are set out in the Release Requirements and/or otherwise set out or referred to in the Order. The Supplier warrants that it shall meet each of these requirements prior to delivery of the Goods and/or performance of the Services.
 4.8 The Customer reserves the right to carry out such testing and inspections on Goods and/or Services as the Customer considers necessary to ensure that Goods and/or Services are tendered for delivery as supplied in conformity with the Contract. The costs of such testing in relation to non-conforming Goods and/or Services shall be charged to and paid by the Supplier.
 4.9 The Supplier warrants that the Goods and/or Services will from delivery and for the period set out or referred to in the Specification, or if no period is set out for 12 months from delivery;
 4.9.1 conform to the Specification and any samples and prototypes approved by the Customer;
 4.9.2 perform and function in all respects in accordance with the Specification;
 4.9.3 conform to the Release Requirements;
 4.9.4 be of satisfactory quality, free from all defects in materials and workmanship and fit and suitable for the purposes for which they are normally used or the proposed use as advised by Customer to the Supplier;
 4.9.5 comply with all applicable statutory and regulatory requirements in the United Kingdom;
 4.9.6 be free from design and other inherent defects; and
 4.9.7 meet all of the requirements of the Contract.
 4.10 The following descriptions apply to the corresponding Release Requirements code: -
 4.10.1 CODE A - This Order is subject to the supplier's own inspection authorised by Rolls Royce under the terms of their total quality control requirements for suppliers to Rolls Royce Plc Sabre.
 4.10.2 CODE B - This Order is subject to the standard condition of the Air Navigation Order and European Airworthiness requirements so far as these conditions are applicable. Subject to inspection and release by the Supplier's inspection organisation as an approved EASA organisation requiring FORM1 release
 4.10.3 CODE C - This Order is subject to the conditions of the Supplier's ISO 9000 series registration and a certificate of conformance is required.
 4.10.4 CODE D - This Order is subject to the conditions of either, the Supplier's AS9100 and/or ISO9000 series (as applicable to the Order) registration and a certificate of conformance is required.
 4.10.5 CODE E - This Order is subject to British Aerospace Conditions BAe/AG/OC/SC1.
 4.10.6 CODE F - Material supplied must be supported by certification of chemical analysis and mechanical test and mill certificates.
 4.10.7 CODE G - A first article inspection report is required to Rolls Royce Sabre latest issue.
 4.10.8 CODE H - Parts are subject to Rolls Royce JIS125/RRE9S0000 manufacturing change requirements.
 4.10.9 CODE J - This Order is subject to Airbus UK Conditions AUK/SA/001-1.
 4.10.10 CODE K - This Order is subject to Beechcraft HBC/QC00-Rev F and 10016252-PROS
 4.10.11 CODE L - Obsolete
 4.10.12 CODE M - This Order is Subject to EASA Part 145 Approval and procedures EASA Form 1 release Required.
 4.10.13 CODE N - Obsolete.
 4.10.14 CODE P - This Order is subject to the conditions of your AS9100 series registration and a certificate of conformance is required.
 4.10.15 CODE Q - It is a requirement of this Order that the Customer and their customers and regulatory authorities reserve the right to access all facilities and records involved within the Order and to verify at source that purchased items conform to specification. In addition; further sub-contracting in furtherance of this Order is not permitted without written approval from the Customer.
 5. **Customer Property**
 5.1 All rights in any Customer Property shall belong to the Customer and the Supplier shall execute any documents and do anything necessary to vest such rights in the Customer without making any charge unless the Customer directs otherwise.
 5.2 The Supplier shall use Customer Property only in the manufacture of the Goods and/or performance of the Services for the Customer in accordance with the Contract and shall not use the Customer Property to manufacture any Goods and/or perform any Services for itself or for any third parties.
 5.3 The Supplier shall keep all Customer Property safe, shall not damage or make any modifications to nor part with possession of any Customer Property (unless required to do so in proper performance of the Contract) if any Customer Property is lost, damaged or wasted the Supplier shall promptly as the Customer directs (and at the Supplier's own cost and expense) repair or replace the Customer Property and/or pay to the Customer the repair costs and/or replacement value of the Customer Property notified to the Supplier by the Customer.
 5.4 The Supplier shall deliver up the Customer Property to the Customer immediately on demand.
 5.5 The Supplier shall keep an auditable register of all Customer Property and make this available to the Customer on request.
 6. **Acceptance and rejection**
 6.1 The Customer shall not be treated as having accepted any Goods and/or Services until it has had a reasonable time to inspect the Goods and/or Services following delivery or performance or after any latent defect has become apparent.
 6.2 Neither any inspection or testing by the Customer or its representatives whether before or after physical delivery or performance of Goods and/or Services nor the signing of any delivery note or other document acknowledging physical receipt of any Goods and/or Services shall constitute evidence of acceptance or approval of Goods and/or Services.
 6.3 The Customer may reject any Goods and/or Services that are defective or damaged or otherwise not supplied in accordance with these Conditions by giving notice to the Supplier.
 6.4 Without prejudice to any rights or remedies of the Customer, if any Goods and/or Services are found to be defective or not in accordance with the requirements of the Contract, the Supplier shall promptly and at its own cost and expense, repair or replace the Goods and/or re-perform the Services and/or refund the price for the Goods and/or Services (and replace any Customer Property used in respect of the defective Goods and/or Services) in full as the Customer directs.
 6.5 Where the Customer discovers more than one defective unit in any given batch of Goods and/or Services delivered at the same time, the Customer shall be entitled to reject the entire batch.
 6.6 Consignment or part deliveries may be rejected unless the Customer has agreed in writing to accept such deliveries.
 7. **Property/Risk**
 7.1 The risk in each shipment of Goods shall not pass to the Customer until the Customer has accepted the Goods comprised in such shipment.
 7.2 The property (both legal and equitable) in each shipment of Goods shall pass to the Customer on delivery, or if earlier on payment of any part of the price of the Goods and/or Services.
 7.3 The risk in any Customer Property shall pass to the Supplier on delivery to the Supplier by the Customer or on production of the Customer Property by the Supplier or when ordered by the Supplier where it is to be delivered by a third party.
 7.4 The property (both legal and equitable) in the Customer Property provided by the Customer shall remain with the Customer. Where Customer Property is produced by the Supplier or purchased from a third party by the Supplier the property (both legal and equitable) shall pass to the Customer when the Customer Property has been produced by the Supplier and/or when ordered by the Supplier where it is to be delivered by a third party.
 8. **Price and Payment**
 8.1 The price to be paid by the Customer to the Supplier for Goods and/or Services shall be as set out in Order.
 8.2 Unless otherwise agreed by the Customer in writing the price is inclusive of all costs and expenses ancillary and/or in connection with the provision of the Goods and/or Services including the cost of all packaging, packing, security tagging, labelling, carriage, insurance and delivery, third party costs and expenses and all other costs and/or expenses incurred by the Supplier in relation to Goods and/or performance of the Services and any duties or levies, but are exclusive of VAT or sales tax.
 8.3 Unless otherwise agreed by the Customer in writing, invoices shall only be rendered by the Supplier, after completion of delivery of the Goods and/or performance of the Services under the Contract in full and to the satisfaction of the Customer.
 8.4 The Supplier is required to issue a proper tax invoice in accordance with applicable legislation before the Customer shall be required to make payment for Goods and/or Services. Invoices shall be in the form which the Customer specifies from time to time and state the Order number.
 8.5 Unless otherwise agreed in writing by the Customer, the Customer shall pay each valid invoice rendered in accordance with these Conditions within 60 days of the end of the month in which the invoice is received.
 8.6 The Supplier and the Customer shall work jointly to implement a process for continuous improvement of efficiencies in manufacturing the Goods and performance of the Services. The Supplier shall ensure that the Customer receives the benefit of any reduced costs and expenses relevant to Goods and/or Services and the price shall be reduced by the amount of the reduction in costs and expenses.
 9. **Confidentiality**

- 9.1 The Supplier shall not directly and/or indirectly use and/or disclose Confidential Information except in the proper performance of the Contract.
- 9.2 The obligations of confidentiality and non-use set out above shall continue indefinitely and shall survive termination of the Contract for any reason except they shall not apply to information:
- 9.2.1 which the Supplier proves was already in its possession and at its free disposal prior to disclosure by the Customer;
- 9.2.2 which the Supplier proves was developed by it without reference to any Confidential Information;
- 9.2.3 which is after the date of the Contract disclosed to the Supplier without any obligations of confidentiality by a third party who is not in breach of any duty of confidentiality in doing so;
- 9.2.4 which is or becomes generally available to the public through no default and/or omission on the Supplier's part; or
- 9.2.5 to the extent it is required to be disclosed by law and/or the rules of any recognised stock exchange and/or regulatory authority on condition that the Supplier gives the Customer as much advance notice of such disclosure as possible.
- 9.3 The exceptions in condition 9.2 above shall not apply to any combination of features merely because individual features (but not the combination itself) fall within any one or more of such exceptions.
- 9.4 The Supplier acknowledges that damages may not be an adequate remedy for breach of this condition 9 and accordingly agrees that the Customer shall be entitled to seek and obtain any injunctive and/or other equitable relief in relation to any breach of this condition 9.
10. **Intellectual Property**
- 10.1 All Intellectual Property Rights in any Customer Property shall at all times be and remain the property of the Customer or its licensor.
- 10.2 In the absence of prior written agreement by the Customer to the contrary, all Intellectual Property Rights (other than any Intellectual Property Rights in Goods if the Goods have not been supplied to a bespoke specification of the Customer) created by the Supplier or any employee, agent, supplier or subcontractor of the Supplier in the course of performing the Contract, or for the purpose of performing the Contract shall vest in the Customer upon creation ("Customer IPR").
- 10.3 The Supplier hereby assigns to the Customer all of the Customer IPR which does not automatically vest in the Customer.
- 10.4 To the extent that any of the Customer IPR is not wholly and/or validly assigned, the Supplier shall hold them upon a bare trust for the full and exclusive benefit of the Customer.
- 10.5 The Supplier warrants that the use and/or exploitation of the Goods and/or Services by or on behalf of the Customer will not infringe the Intellectual Property Rights of any third party.
- 10.6 The Supplier shall at the request of the Customer:
- 10.6.1 execute all further documents and/or deeds and do all such things as the Customer may require to enable the Customer to secure the delivery of information and the benefit of the Customer IPR and/or any rights licensed under condition 10.9; and
- 10.6.2 take such action as the Customer may reasonably require to assist the Customer in bringing or defending any proceedings relating to the Customer IPR and/or any rights licensed under condition 10.9.
- 10.7 The Supplier shall at the Customer's request deliver up to the Customer all documents, material and/or other media which may be in the possession, power or control of the Supplier and which comprises or contains any part of the Customer IPR or any physical embodiment of the Customer IPR and share with the Customer all know-how that is not in material form.
- 10.8 The Supplier shall procure waivers of any moral rights in any physical embodiment of the Customer IPR to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 10.9 Where, in connection with the provision of the Goods and/or Services by the Supplier, the Supplier uses any Intellectual Property Rights which do not fall within condition 10.1, condition 10.2 or condition 10.3 the Supplier shall grant to the Customer, or shall procure that the Customer is granted (without charge to the Customer), a perpetual, non-exclusive, royalty-free licence to use, adapt, maintain and support such Intellectual Property Rights, which licence shall include the right for any person providing goods and/or services to the Customer to use, adapt, maintain and support such Intellectual Property Rights for the benefit of the Customer.
11. **Indemnities**
- 11.1 The Supplier agrees to indemnify and keep indemnified the Customer against any and all Liability and legal costs on a full indemnity basis suffered and/or incurred by the Customer and arising from or due to (a) any breach of contract; (b) any liability under the Consumer Protection Act 1987; (c) any tortious act and/or omission; (d) any infringement or alleged infringement of any Intellectual Property Rights of any third party as a result of the Customer's receipt, use and/or exploitation of the Goods and/or Services, the Customer IPR and/or any other Intellectual Property Rights provided by the Supplier ("IPR Claim"); and (e) any breach of statutory duty by the Supplier.
- 11.2 If at any time an IPR Claim is made the Supplier shall at the Customer's option:-
- 11.2.1 procure the right for the Customer to continue using the Goods and/or Services; or
- 11.2.2 replace or modify the Goods and/or Services, with non-infringing substitutes, provided that any substitute shall not materially prejudice the Customer's use of the Goods and/or Services and that such substitution will be carried out so as to avoid or reduce insofar as possible any interruption to the Customer's business operations. Without prejudice to any other rights of the Customer, the Supplier shall reimburse the Customer any costs or expenses incurred by the Customer in implementing or using any replaced or modified Goods and/or Services.
12. **Records and Audit Rights**
- 12.1 The Supplier shall at all times operate a system of accounting and maintain complete and accurate records of all actions taken in connection with, and all supporting documentation in relation to, the performance of its obligations under the Contract ("Records").
- 12.2 The Supplier shall retain the Records (both during and after the Contract) and shall not destroy the Records (whether during or after the Contract) without the Customer's prior consent in writing. The Supplier shall ensure the safe custody of all Records and shall prevent unauthorised access to or use of them both during and after the Contract.
- 12.3 The Supplier shall permit the Customer to take copies of Records on the Customer's request whether during or after the Contract.
- 12.4 The Supplier shall ensure that all Records and all information provided to the Customer in relation to any Contract are accurate, complete and not misleading.
- 12.5 The Supplier shall provide to the Customer and the Customer's representatives, and shall procure that the Customer and the Customer's representatives are provided with, access to the Supplier's premises and/or any other premises where the Goods and/or Services are manufactured and/or performed and/or where the Records are located to conduct an audit to ensure the Supplier's compliance with the Contract (including an audit of the Records, and/or the facilities, processes and/or procedures used for the manufacture of the Goods and/or performance of the Services). Any such audit will be carried out with 48 hours' prior notice or in the case of suspected fraud or if the Customer (or its end-customer) is required to conduct an audit, then the Customer, the Customer's representatives, the end-customer and/or any regulatory authority shall be entitled to carry out the audit without giving prior notice. The rights of access set out under this clause shall also apply to any relevant suppliers to the Supplier whereby each supplier to the Supplier shall each be deemed to be the "Supplier".
- 12.6 The Supplier shall provide, and procure the provision, at no cost to the Customer of all reasonable assistance and facilities (including, where appropriate, access to office accommodation, telephone and/or fax facilities) to the Customer and the Customer's representatives as required by the Customer to exercise its rights under condition 12.5 above.
13. **Health, Safety And Environmental**
- 13.1 The supplier agrees to comply in all respects with all applicable legislation and regulations (as they may be amended or come into force from time to time) and any requirements of any relevant authorities relating to hazardous substances, articles including any parts, subparts, components and chemical constituents contained therein, and chemicals affecting the Goods including, without limitation, all registration requirements, labelling requirements, safety assessments, communication requirements of information up and down the supply chain, responding promptly to requests for data and information from suppliers and customers, all requirements in relation to "articles" or "substances of very high concern" ("SVHC") as identified on the "Candidate List" as published by European Chemicals Agency ("ECHA") in accordance with Article 59.1 of REACH (as defined below), retaining all relevant documentation and supplying any documentation regarding handling or use whether pursuant to the European Regulation (EC) no. 1907/2006 of 18th December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH") as amended or other applicable laws or regulations. The parties undertake and agree to inform each other of any information or restrictions on use which may or are likely to impact on the use, sale or disposal of any substance contained in the Goods supplied.
- 13.2 Without limiting the foregoing, the Supplier agrees to notify The Customer, in writing, of all SVHCs on the Candidate List contained in Goods supplied to The Customer pursuant to the terms of the Contract upon the initial delivery of the Goods and whenever the Candidate list is amended. Such written notification shall include the following information:
- a) the name(s) of all SVHCs contained in the Goods,
- b) the European Chemical Substance Information System (EINECS) and Chemical Abstract System (CAS) Number,
- c) for each SVHC, the concentration (in percent) of the SVHC contained in the Goods, and if the concentration of the SVHC is greater than 0.1% ww, then include information on the safe use and handling of the Goods as required under Article 33 of REACH.
- 13.3 The supplier shall comply in all respects with all applicable legislation and regulations relating to electrical or electronic equipment and in particular take-back obligations and whether this is pursuant to The Waste Electrical and Electronic Equipment Directive (2002/96/EC) and Regulations 2006 (SI No. 2008/3289) ("WEEE") and amending legislation or other applicable laws or regulations and, in relation to any such equipment provided or sold by the Supplier, the Supplier agrees to take back such equipment and the Supplier will not charge The Customer any additional amount to undertake these responsibilities.
- 13.4 With respect to all Goods supplied to The Customer under the Contract, the Supplier represents and warrants to its knowledge after reasonable investigation and due diligence, that:
- a) Goods, including all chemical constituents contained therein, are pre-registered and/or registered under REACH if required, are not restricted from use under Annex XVII of REACH, and if subject to Authorisation under Annex XIV of REACH, are authorised for use by The Customer; and
- b) none of the Goods containing any lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB), polybrominated diphenyl ethers (PBDE) or any other hazardous substances fall under the code of EU Directive 2002/95-EC (RoHS Directive) as amended from time to time.
- 13.5 The Supplier shall comply in all respects with all applicable health and safety and environmental laws and regulations and shall indemnify The Customer against all damages, costs, losses, charges, expenses or liabilities whatsoever caused by or arising out of any breach by the Supplier of such legislation or regulation.
- 13.6 The supplier agrees to comply in all respects with all applicable legislation and regulations of the US Securities and Exchange Commission (SEC) ruling, also known as the Dodd-Frank Act. The Legislation requires publicly traded (i.e. SEC-registered) companies to report annually to the SEC on their worldwide use of "Conflict Minerals" in products manufactured and the country of origin for any "Conflict Mineral".
14. **Termination**
- 14.1 The Customer may immediately terminate the Contract by written notice if the Supplier:
- 14.1.1 breaches condition 4.5 and/or 4.6;
- 14.1.2 loses any accreditation which it requires to supply the Goods and/or Services in accordance with the Release Requirements;
- 14.1.3 breaches the terms of the Contract (and if remediable the breach has not been remedied within 30 days of receiving notice requiring it to be remedied);
- 14.1.4 persistently breaches any one or more terms of the Contract;
- 14.1.5 ceases or threatens to cease to carry on business;
- 14.1.6 is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstances; and/or
- 14.1.7 suffers or undergoes any change of Control.
- 14.2 Upon termination of the Contract for whatever reason, the Supplier will deliver up to the Customer or at the Customer's option destroy any and all Deliverables, Confidential Information, all Customer Property, the physical embodiment of any Customer IPR and/or any other materials provided by the Customer, which are in the Supplier's possession, power or control.
15. **Bribery and Anti-Corruption**
- 15.1 The Supplier shall:
- 15.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010; and
- 15.1.2 comply with the Customer's ethics, anti-bribery and anti-corruption policies as notified to the Supplier from time to time.
- 15.2 The Supplier shall ensure that any person associated with the Supplier who is performing the Services does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this condition 15 ("Relevant Terms"). The Supplier shall in any circumstances be responsible for the observance and performance by such persons of the Relevant Terms, and shall in any circumstances be directly liable to the Customer for any breach by such persons of any of the Relevant Terms howsoever arising.
- 15.3 Breach of this condition 15 shall be a material breach of the Contract entitling the Customer to terminate the Contract without incurring any Liability for such termination.
- 15.4 For the purpose of this condition 15 whether a person is associated with another person shall be determined in accordance with the Bribery Act 2010 and includes but is not limited to any subcontractor of the Supplier.
16. **General**
- 16.1 These Conditions together with the Order and the documents referred to in these Conditions contain the whole agreement between the parties and supersede any prior written or oral agreement between them and are not affected by any other promise, representation, warranty, usage, custom or course of dealing. The parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Contract. Nothing in the Contract shall exclude liability for any fraudulent statement or act made prior to the date of the Contract.
- 16.2 If there is any conflict between the provisions in the documents referred to in these Conditions then the provisions shall prevail and take priority in the following order:
- 16.2.1 the provisions contained in the Order;
- 16.2.2 the provisions contained in the Specification;
- 16.2.3 the provisions contained in the Release Requirements;
- 16.2.4 the provisions contained in any Operational Documents; and
- 16.2.5 the provisions contained in these Conditions.
- 16.3 A person who is not a party to the Contract shall not have the right to enforce any terms of the Contract. This shall not apply to any customer of the Customer, to whom the Customer consents to being able to enforce the Contract as though they were the Customer. The rights of any third party to enforce the Contract may be varied and/or extinguished by the Customer without the consent of any such third party.
- 16.4 No waiver by either party of any breach of the Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
- 16.5 The invalidity, illegality or unenforceability of any of the provisions of the Contract shall not affect the validity, legality or enforceability of the remaining provisions of the Contract.
- 16.6 The Supplier shall not assign its interest in the Contract (or any part) or sub-contract any of its obligations under the Contract without the written consent of the Customer. The Customer may assign any or all of its rights and/or obligations under the Contract to any third party without the Supplier's consent.
- 16.7 Without prejudice to the generality of condition 16.6, the Supplier acknowledges and agrees that the Customer shall be freely entitled at any time to assign the benefit of the any warranties or guarantees provided with the Goods and/or Services to the Customer's own customers.
- 16.8 If the Supplier sub-contracts the whole or any part of its obligations under the Contract having obtained the Customer's written consent in accordance with condition 16.6 the Supplier shall ensure that it imposes obligations on the sub-contractor in the sub-contract at least equivalent to the Supplier's obligations under the Contract and shall procure that the Customer has the right to directly benefit and enforce such sub-contract.
- 16.9 The Supplier shall, at the request of the Customer, do all things and execute all further documents necessary to give full effect to the Contract.
- 16.10 The Supplier shall maintain such insurance policies in connection with the performance of the Contract as may be appropriate or as the Customer may require from time to time.
- 16.11 Termination of the Contract shall not affect any rights of the parties accrued up to the date of termination.
- 16.12 No condition shall survive expiry or termination of the Contract unless expressly and/or impliedly intended to survive such expiry or termination.
- 16.13 The rights, powers and remedies provided in the Contract are cumulative and not exclusive of any rights, powers and remedies provided by law.
- 16.14 Any notice or other document required to be given under the Contract or any communication between the parties with respect to any of the provisions of the Contract shall be in writing in English and be deemed duly given if signed by or on behalf of a duly authorised officer of the party giving the notice.
- 16.15 Any notice or other communication shall be deemed to be given to and received by the addressee:
- 16.15.1 at the time the same is left at the address of or handed to a representative of the party to be served if on a Working Day, and if not on the next Working Day;
- 16.15.2 by prepaid first class post on the third Working Day following the date of posting; and/or
- 16.15.3 in the case of a facsimile transmission or other means of telecommunication or email on the next Working Day following successful transmission.
- 16.16 In proving the receipt of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication and/or email was properly addressed and despatched and despatch of the transmission was confirmed and/or acknowledged as the case may be.
- 16.17 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales, provided that nothing in this condition shall prevent the Customer from taking any action in any foreign court where the Supplier is resident outside England and Wales.