



DTR Medical[®]

AN
INNOVIA
MEDICAL
COMPANY

DTR MEDICAL LIMITED

Purchase Terms for the Purchase of Goods and Services

March 2024 - Revision 1

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I. INTERPRETATION

1.1 The definitions and rules of interpretation below apply in these conditions.

Buyer: DTR Medical Limited (unless otherwise stated on the Purchase Order).

Contract: the Purchase Order and the Seller's acceptance of the Purchase Order.

Goods: any goods agreed in the Contract to be bought by the Buyer from the Seller (including any part or parts of them), including goods required to be delivered in performance of the Services and goods returned to the Seller for repair in accordance with the Contract, as further described in the Specification, if any.

Law: any legislation (primary or secondary), order, directive, or other legal or regulatory requirement in any relevant jurisdiction, from time to time.

Purchase Order: the Buyer's written (which, for the purposes of this definition, includes electronic communications) instruction to the Seller to supply the Goods and/or Services, incorporating these conditions (including the schedules) and the Specification.

Representative: in respect of the Buyer and the Seller, the persons identified on the Purchase Order as the Buyer's and the Seller's representative or contact respectively for the purpose of the Contract, or such other person(s) notified to the other from time to time.

Seller: the person, firm or company identified on the Purchase Order as the provider of Goods and/or Services.

Seller Party: any of (a) the Seller, (b) any individual employed or engaged by any other Seller Party and (c) any sub-contractor, agent, delegate, representative or associated company of the Seller which, with the prior approval of the Buyer, is engaged in the performance of the Seller's obligations under the Contract.

Services: any services agreed in the Contract to be bought by the Buyer from the Seller and as set out in the Specification or to be rendered in connection with the delivery of the Goods to be delivered.

Site: means the location or locations identified in the Purchase Order, if any.

Specification: the Specification or scope attached to or clearly referred to in the Purchase Order, to include all documents, standards and drawings therein referred to.

2. APPLICATION OF TERMS

2.1 Conditions 1 to 19 inclusive apply to all Contracts. In addition, where a Purchase Order includes

- (a) the provision of Services, Schedule 1 shall apply; and/or
- (b) the hire of Contract Staff, Schedule 2 shall apply; and/or
- (c) the provision of Consultancy Services shall apply.

2.2 Subject to the Buyer notifying the Seller in writing and in explicit terms that (a) these conditions do not apply to the Contract or (b) the Buyer agrees to

be bound to specified variations to these conditions for the purposes of the Contract, these conditions are the only conditions upon which the Buyer contracts with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions. In the event of any conflict between these conditions and a Purchase Order the Purchase Order will prevail.

2.3 Each Purchase Order which the Buyer sends to the Seller shall be deemed to be an offer by the Buyer to buy Goods or Services subject to these conditions and no Purchase Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by commencing to fulfil the Purchase Order, in whole or in part accepts the offer.

2.4 No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of a Purchase Order, specification or other document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

3. WARRANTIES

3.1 The Seller warrants that the Goods and the Services shall:

- (a) not be changed without the prior written consent of the Buyer;
- (b) be of the best available design, of the best quality and workmanship without fault or defect (including latent defect),
- (c) in the case of the Services, be performed with reasonable care and skill, in accordance with generally recognised commercial practices and standards for similar services;
- (d) conform to the Purchase Order (including, but not limited to, the Specification, which the Seller warrants to be accurate and complete in all material respects and not misleading);
- (e) in the case of the Goods, to the extent they comprise parts and components which according to the Specification or drawings must be identical, such parts and components shall actually be interchangeable and the fitting surfaces of all parts and components which come into consideration for replacement shall be finished in accordance with any tolerances stated in the Specification or on the drawings;
- (f) in the case of the Goods, be complete and fully operational and shall be delivered with all parts (and also those parts that are not specified in the Purchase Order, but which are required for proper operation and also including the usual safety devices, special tools etc.);
- (g) be accompanied by all appropriate information, warnings, instructions and documentation in relation to the safe use, handling, storing, operation, consuming, transportation and disposal of any Goods or parts or materials, in particular in relation to hazardous materials which will be clearly identified to the Buyer;
- (h) be free of CFC's, asbestos, halons and radiation above natural background levels unless specifically agreed by the Buyer;
- (i) comply with any applicable national and international quality assurance standards from time to time published under which the

Seller is approved; and/or as reasonably requested by the Buyer; and

- (j) in the case of the Goods, when delivered, be accompanied by a delivery note which shows, inter alia, the Purchase Order number, date of Purchase Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered, and if having a unit weight more than 1,000 kg, be clearly marked as such.

3.2 The Seller warrants that the Goods and Services shall conform with all Laws applicable to:

- (a) such Services including in relation to health, safety and environmental standards; or
- (b) such Goods as regards the design, manufacture, quality, packaging, transportation, delivery, labelling, health, safety and environmental standards and use of such Goods which are in force at the time of supply.

3.3 The Seller warrants that it (and each other Seller Party) shall at all times and at its and their own expense:

- (a) maintain all necessary licenses and consents and ensure that they do not do or cause to be done any act or omission that may cause the Buyer to breach any licenses, consents;
- (b) adopt good ethical behaviour and comply with all applicable Law (including but not limited to anti-corruption legislation) and ensure that they do not do or cause to be done any act or omission that may cause the Buyer to breach any applicable Law (including but not limited to anti-corruption legislation);
- (c) adopt safe working practices and at the proper time supply and install within the original contract price such guards and safety devices as may be necessary to comply with the provisions of all health and safety Laws and shall not in the performance of the Contract in any manner endanger the safety of or unlawfully interfere with the convenience of any other person, including employees and/or contractors of the Buyer;
- (d) ensure that, in performing its obligations under the Contract, it does not cause any disturbance or damage to the industrial operations and property at the relevant site;
- (e) comply with and ensure that they do not do or cause to be done any act or omission that may cause the Buyer or any of its employees to breach the Buyer's conditions in relation to any relevant site (including but not limited to health and safety conditions, safety management systems, safety cases, hygiene policies, security policies) and the Buyer's code of conduct, code of ethics, gifts and hospitality policy and guidance on travel and expenses made available to the Seller from time to time;
- (f) confirm the accuracy of the information provided as part of any Buyer contractor approval process or in accordance with any Buyer procurement principles, continue for the term of the Contract to comply with the requirements of any Buyer contractor approval process and/or procurement principles and promptly notify the Buyer of any changes to the details provided during or subsequent

to any such Buyer contractor approval process or in accordance with any Buyer procurement principles;

- (g) assist the Buyer (and any person nominated by the Buyer) in the investigation of any accident or incident or the resolution of any dispute, which assistance shall include, but not be limited to, making personnel available for interview, providing access to documents and records, providing information reasonably requested by the Buyer and assisting in any notification required to be made to any regulatory authorities;
- (h) notify the Buyer as soon as it becomes aware of any breach of Laws or any health and safety hazard or issue which arises in relation to the Goods or Services (which notification shall not release the Seller from any liability and/or obligations in respect of such breach, hazard or issue);
- (i) co-operate with the Buyer in all matters relating to the Services;
- (j) subject to the prior written approval of the Buyer's Representative, appoint or, at the request of the Buyer, replace without delay the Seller's Representative, who shall have authority under the Contract contractually to bind the Seller on all matters relating to the Contract; and
- (k) notify the Buyer's Representative promptly after it becomes aware that the Buyer is not or may not be complying with any of the Buyer's obligations, provided that the Seller shall not be entitled to rely on such notice as relieving the Seller's performance under the Contract, save to the extent that it actually restricts or precludes performance of the Seller's obligations.

3.4 The warranties given under this condition 3 shall survive any performance, acceptance or payment pursuant to the Contract and shall be extended to any repaired or replacement Goods or substituted or remedial services provided by the Seller.

3.5 The Seller undertakes that it (and each other Seller Party) shall at all times allow the Buyer or any Buyer Representative to have access to the Seller or any Seller Party's (1) premises, (2) information and (3) personnel to allow the Buyer and/or the Buyer Representative to audit compliance with the warranties given under each of condition 3.3(b), (e), (f) and (g).

4. PROGRESS AND INSPECTION

4.1 Where the Seller is of the opinion that it will be unable to meet its obligations under the Contract or that it will only be able to meet its obligations in part, or too late, it shall promptly notify the Buyer's Representative accordingly in writing, specifying the conditions and circumstances causing such failure or delay. This obligation also arises if the source of the problem lies with the Buyer. Where the Seller fails to so notify the Buyer's Representative, even if the Buyer should have been made aware of the existence of those conditions and circumstances, no reliance by the Seller on the conditions and circumstances referred to above can exclude, reduce or mitigate the Seller's obligations under the Contract.

4.2 On request made by the Buyer, the Seller shall prepare a manufacturing schedule or a progress report, and send copies of the schedule or the report to the Buyer. These schedules or reports shall specify:

- (a) in the case of the Goods, the progress of the drawing operation, the material supply, the operations in the workshop and the delivery date; and
- (b) in the case of the Services, the commencement date, timetable and status of the Services, details of the planned workforce, the storage and assembly areas and other resources required and the period for which they are required; and
- (c) in each case, such other information as the Buyer may request.

4.3 At any time prior to delivery of the Goods to the Buyer or completion of the Services, the Buyer (or its nominee) shall have the right to inspect and test the Goods or inspect the work being carried out in performance of the Services. If at the date of the inspection the Goods are located or the Services are being performed at the premises of the Seller, any Seller Party or its, or their associated companies or sub-contractors, the Seller shall procure that the Buyer or its nominee has access on reasonable notice and shall ensure that the inspectors shall receive such information and assistance as they reasonably request in relation to their inspection or testing of the Goods or Services.

4.4 If the results of such inspection or testing cause the Buyer to be of the opinion that the Goods and/or Services do not conform or are unlikely to conform with the Purchase Order or to any Specification and/or patterns supplied or advised by the Buyer to the Seller or that the Goods and/or Services may not be delivered to time, the Buyer may, at its option:

- (a) inform the Seller in writing, following which the Seller shall immediately take such action as is necessary to ensure conformity;
- (b) reject the Goods or Services; or
- (c) require and witness further testing and inspection.

4.5 Notwithstanding any such inspection or testing or any statement made by any inspector, the Seller shall remain fully responsible for the Goods and the Services and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.

5. DELIVERY AND QUANTITY

5.1 The Goods shall be delivered in accordance with Incoterms DDP at the place and time specified in the Purchase Order or to such other place of delivery as is agreed by the Buyer in writing prior to delivery of the Goods. In addition the Seller shall off-load the Goods at its own risk as directed by the Buyer. Unless otherwise stipulated by the Buyer in the Purchase Order, deliveries shall only be accepted by the Buyer in normal business hours.

5.2 The Seller shall deliver the quantity specified in the Purchase Order. All Goods supplied on a price for weight basis shall be delivered and weighed at the Buyer's premises. The net weight so recorded shall be the weight for the Contract.

5.3 The Goods shall be packaged by the Seller so as to ensure that they will be in good condition upon arrival at their destination. If the Seller requires the Buyer to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to the Buyer and any such packaging material shall only be returned to the Seller at the cost of the Seller. Such material shall be marked with the Seller's name and address.

5.4 Where the Buyer agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Failure by the Seller to deliver any one instalment shall entitle the Buyer at its option to treat the whole Contract as repudiated.

5.5 If the Goods are delivered to the Buyer in excess of the quantities ordered the Buyer shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be available for collection at the Seller's expense within 3 months. Thereafter the Buyer may dispose of such excess Goods at the Seller's expense.

6. CONSEQUENCES OF DEFAULT

6.1 Without prejudice to the Buyer's other rights under the Contract or otherwise and subject to condition 6.2 below, if:

- (a) the Seller breaches any of the warranties set out in condition 3.1; or
- (b) the Seller breaches any other provision of the Contract not referred to in condition 6.1(a) above or any of the Goods or the Services otherwise fail to comply with the provisions of the Contract;

the Buyer shall where practicable first seek to meet and discuss the situation with the Seller as soon as possible, but reserves the right to avail itself of any one or more of the remedies set out in condition 6.3 at its discretion, whether or not any part of the Goods or the Services have been accepted by the Buyer.

6.2 Where condition 6.1(a) applies, the remedies set out in condition 6.3 shall only be available where the Buyer notifies the Seller of the failure of the Goods or Services to comply with the Contract or the breach of warranty prior to the latest of:

- (a) 12 months after the date of acceptance of the relevant Goods or Services;
- (b) where the Seller has repaired or replaced Goods or provided substitute Services pursuant to condition 6.3, 12 months after the date of acceptance of such repaired or replacement Goods or substitute Services; or
- (c) where after the expiry of the relevant period referred to in condition (a) or (b) above of this condition 6.2 it shall appear that condition 6.1(a) applies and the Buyer would not reasonably have been expected to notice that fact within the relevant 12 month period referred to in condition 6.1(a), six years after the date of acceptance of the original Goods or Services, repaired or replacement Goods or substitute Services as applicable.

6.3 The remedies available to the Buyer following the occurrence of one of the events referred to in condition 6.1 are:

- (a) to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that the Seller shall immediately pay to the Buyer a full refund for the Goods so returned;
- (b) to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or Services or to supply replacement Goods or substitute Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled within a reasonable period specified by the Buyer;

- (c) to refuse to accept any further deliveries of the Goods or subsequent performance of the Services which the Seller attempts to make, in each case without any liability to the Seller;
- (d) to carry out or procure that some other person carries out at the Seller's expense any work necessary to make the Goods and/or Services comply with the Contract (including but not limited to freight, disassembly and re-assembly);
- (e) if the Seller (or any other Seller Party) breaches a warranty set out in condition 3.2 or 3.3, to notify (in writing or otherwise) the Seller of such breach and instruct the Seller to suspend performance of its obligations under this Contract with immediate effect and to take such steps as the Buyer may direct in order to remedy such breach at the Seller's expense;
- (f) to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract;
- (g) to obtain substitute goods or purchase substitute services elsewhere and recover from the Seller any expenditure reasonably incurred by the Buyer in obtaining the goods or services in substitution from another seller;
- (h) in the event that the Seller or any Seller Party is in breach of condition 3.3 (b), to terminate forthwith the Contract in whole or in part or to rescind the Purchase Order, in each case without any liability to the Seller; and
- (i) in the event of any failure by the Seller to fulfil its obligations under condition 6.3(a) to (h) or to the extent there is any other material or persistent default by the Seller of its obligations under the Contract, which being capable of remedy are not remedied within 14 days of notice of such default, to terminate the Contract in whole or in part or to rescind the Purchase Order, in each case without any liability to the Seller.

6.4 If the Buyer exercises its right under condition 6.3(d), the Buyer shall have the free use of all tools, equipment, stores and other things (whether the same be owned, hired or licensed by the Seller or a Seller Party) that may be at any time used in connection with the Services, without being responsible to the Seller for fair wear and tear and to the exclusion of any right of the Seller over the same.

6.5 If the Purchase Order includes a provision requiring the Seller to pay an amount of liquidated damages if it fails to achieve a delivery date, performance level, output or standard, the Seller shall pay such amount as liquidated damages and not as a penalty.

6.6 If the Buyer exercises its rights under conditions 6.3(b), (d) and/or (e) above in respect of Goods which do not, in the Buyer's opinion, meet the requirements specified in the Contract, the Seller grants to the Buyer the right to utilise the relevant Goods until such time as they meet those requirements.

7. PRICE

7.1 The price of the Goods and/or the Services shall be stated in the Purchase Order and unless otherwise agreed in writing by the Buyer shall be exclusive of value added tax but inclusive of all other charges.

7.2 No variation in the price nor extra charges shall be accepted by the Buyer unless formally agreed in writing.

7.3 Where the Contract entitles the Seller to recover expenses (including travel costs), the Buyer shall reimburse such reasonable expenses necessarily and properly incurred in connection with performance of the Contract as agreed in advance with the Buyer and subject to such expenses being detailed in the Seller's invoice and supporting vouchers or other evidence being submitted. The Buyer will only reimburse expenses to the same amounts as can be reclaimed by employees in accordance with the Buyer's company policies. For the avoidance of doubt the Seller shall not include any profit mark-up or handling charge in respect of any expenses.

8. PAYMENT AND INVOICING

8.1 Payment of undisputed amounts shall, unless otherwise set out in the Purchase Order, be made as has been agreed between both Buyer and Seller provided the invoice submitted quotes the Buyer's Purchase Order number and matches to the original purchase order.

8.2 Without prejudice to any other right or remedy, the Buyer reserves the right to set off any amount owing at any time from the Seller to the Buyer against any amount payable by the Buyer to the Seller.

8.3 If any undisputed sum under the Contract is not paid when due then, without prejudice to the parties' other rights under the Contract, provided the Seller issues an invoice that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 2% per annum over Bank of England base rate. The Seller is not entitled to suspend deliveries of the Goods or performance of the Services as a result of any sums being outstanding.

9. INDEMNITY

9.1 The Seller shall keep the Buyer and any of its agents, contractors, customers or associated companies indemnified in full against all direct, indirect or consequential losses and/or liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), increased cost, loss, damages, injury, claims, charges, demands, actions, costs and expenses (including legal and other professional fees and expenses) (together the "Losses") awarded against or incurred or paid by the Buyer and any of its agents, contractors, customers or associated companies as a result of or in connection with:

- (a)** the Seller's (or any other Seller Party's) negligence, default or breach of contract;
- (b)** defective workmanship, quality or materials; and
- (c)** any claim made against the Buyer in respect of any Losses sustained by the Buyer's employees, agents, contractors or by any customer or third party to the extent that such Losses were caused by, relate to or arise from the Goods or the provision of the Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller or any other Seller Party.

9.2 The liability of the Seller to the Buyer under condition 9.1(a) and (b) above (but not under any other condition including without limit conditions 14.4 and 14.5) shall be limited to the amount of £10m. This limitation shall not apply to any Losses;

- (a) caused wilfully by or by material breach of Contract on the part of the Seller or any other Seller Party; or
- (b) arising out of personal injury or death to any person; or
- (c) caused solely by the negligence or wilful default of the Seller.

10. RISK/PROPERTY

10.1 The Goods shall remain at the risk of the Seller until delivery to the Buyer is complete at the place or places and in the manner specified in the Purchase Order when, subject to condition 10.3 below, risk in the Goods shall pass to the Buyer.

10.2 Ownership of the Goods shall, subject to condition 10.3 below, pass to the Buyer on the earlier of:

- (a) the time at which the Goods become identifiable as the Goods to be delivered to the Buyer under the Contract;
- (b) completion of delivery as described in condition 10.1 above; and
- (c) payment of the price or any instalment of the price.

10.3 Where the Buyer rejects any Goods in accordance with these conditions, such Goods shall be deemed to have remained the property and risk of the Seller at all times.

10.4 Goods supplied by the Buyer to the Seller for servicing or repair shall remain from the time of collection or receipt until re-delivery at the place or places and in the manner instructed by the Buyer at the absolute risk of the Seller in regard to any loss or damage.

11. INSURANCE

11.1 During the term of the Contract, the Seller shall maintain in force with a reputable insurance company insurance which is adequate, in the Buyer's reasonable opinion, to cover the Seller's full liability under the Contract and in any event:

- (a) public liability insurance for not less than £1,000,000 for any one incident;
- (b) products liability insurance for not less than £1,000,000 for any one incident; and
- (c) employer's liability insurance for a minimum limit of £1,000,000.

11.2 The Seller shall, on the Buyer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium. Such right of inspection shall not discharge the Seller in any way from its duty to comply with its obligations hereunder. Such insurances should be extended to provide an indemnity to the Buyer as principal.

11.3 The Seller shall at his own cost insure:

- (a) all Goods up to the point when delivery is complete in accordance with condition 10; and
- (b) all Goods delivered to him by the Buyer for repair or servicing from the time of collection or receiving them until re-delivery in accordance with the instructions of the Buyer,

in each case for their replacement value against loss, damage or destruction resulting from any insurable risk which can be reasonably contemplated as affecting the Goods.

12. CONFIDENTIALITY

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

13. THE BUYER'S PROPERTY

13.1 In conditions 13 and 14 "Buyer's Materials" means all drawings, materials, equipment, patterns, castings, tools, dies, moulds, specifications, software, codes, calculations and other data which are:

- (a) supplied by the Buyer to the Seller;
- (b) not so supplied but used or created or developed by the Seller specifically for the purposes of the manufacture of Goods or the provision of Services to the Buyer or its affiliates; or
- (c) delivered to the Buyer pursuant to this condition 13.

13.2 The Buyer's Materials shall at all times be and remain the exclusive property of the Buyer but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Buyer at the Buyer's request (and, in any event, immediately on termination of the Contract) and shall not be disposed of other than in accordance with the Buyer's written instructions, nor shall such items be copied or used or disclosed to third parties, otherwise than as authorised by the Buyer in writing in advance.

13.3 To allow the Buyer to assemble, use, maintain, enhance and repair the delivered Goods and all parts and components thereof, and to enable the Buyer to purchase or have made such parts and components, the Seller shall, as soon as possible after the delivery date, and at the Seller's cost, provide the Buyer with all drawings, calculations, specifications and other data prepared for the purposes of the Contract or otherwise needed for the assembly, use, maintenance, enhancement and repair of the Goods including software codes and source codes in respect of software developed for the purposes of the Contract (which shall include the codes of all programmes necessary for the proper functioning of those codes) and the relevant CE or other equivalent declaration of conformity in duplicate (or in that number of copies specified in the Purchase Order), together with a set of complete, fully reviewed and (by means of microfilm or otherwise) properly reproducible tracings and CAD-drawings, showing the actual condition of the various Goods, parts and components included in the delivery, as well as with two clear prints of these tracings and CAD-drawings. The drawings must include all details specified by the Buyer. In the case of

commodities a specification of their serial and type numbers will be sufficient.

- 13.4 In respect of software supplied under (but not developed specifically for the purposes of) the Contract, the Seller shall put the relevant software codes and source codes (which shall include the codes of all programmes necessary for the proper functioning of those codes) into an escrow arrangement approved by the Buyer to allow the Buyer access to such codes in agreed circumstances.
- 13.5 The Seller shall, prior to using any Buyer's Materials supplied by the Buyer, inspect those items, which inspection shall include a check of consistency. The Seller shall immediately notify the Buyer of any variations, errors, and/or deficiencies, failing which the Seller shall be liable for any damage resulting from such variations, errors, and/or deficiencies.
- 13.6 If the Seller fails to fulfil its obligations under condition 13.2, the Buyer may enter the Seller's premises and take possession of the Buyer's Materials. Until they have been returned or repossessed, the Seller shall be solely responsible for their safe keeping.

14. INTELLECTUAL PROPERTY

- 14.1 The Buyer retains any and all intellectual property rights in the Buyer's Materials and the Buyer grants a non-transferable, non-exclusive, royalty free licence to the Seller to use such intellectual property rights only to the extent necessary to provide the Goods or perform the Services and such licence shall terminate immediately upon termination of the Contract or upon earlier return of the Buyer's Materials to the Buyer.
- 14.2 Pursuant to condition 13 to the extent that such intellectual property rights do not automatically vest in the Buyer, the Seller assigns to the Buyer all intellectual property rights in the Buyer's Materials which have been used, created or developed for the purposes of the Contract.
- 14.3 The Seller grants to the Buyer (and to the extent the Seller is not able to grant the licence itself, shall procure the grant of) a non-transferable, non-exclusive, royalty free licence (with the right to sub-license) of such intellectual property rights to enable the Buyer to use and enjoy the Goods or the Services including without limitation to allow the Buyer freely to utilise the delivered Goods and enjoy the benefit of the Services, to allow the Goods to perform those functions which they are designed for and to repair the delivered Goods (or to have those Goods repaired) and manufacture (or have manufactured) spare parts and replacements. The Contract price includes the full licence fee.
- 14.4 The Seller declares that the manufacture, delivery, use and/or repair of the Goods to be supplied and of each of the parts thereof and the application of the associated functions and the performance of the Services do not infringe any industrial and intellectual property rights held by third parties and the Seller shall indemnify the Buyer against any loss without limit arising out of claims, liabilities, and expenses (including loss of profits) resulting from any claim or action made by third parties against the Buyer alleging infringement of this condition 14.4.
- 14.5 Where the Buyer is notified by a third party of an alleged infringement it shall inform the Seller forthwith of such notification. The Seller shall promptly take such steps as may be necessary to secure to the Buyer the rights granted in conditions 14.2 and 14.3 above. If the Seller fails to take such steps within a reasonable period of time (and not more than one

month after notification) the Buyer shall have the right to take such action itself whereupon the Seller shall indemnify the Buyer without limit against any costs or liability incurred by the Buyer in so doing. Such action shall include litigation arrangements or compromises with any rightful claimants and making changes in the delivered Goods without impairing the good quality and usability of the Goods as will cause them to become non-infringing.

14.6 The Buyer shall be entitled to apply for and hold such patent or other registered protection for any Buyer's Material as the Buyer thinks fit.

15. TERMINATION AND SUSPENSION

15.1 The Buyer shall have the right at any time and for any reason to suspend or terminate the Contract in whole or in part if any part of its works are closed down permanently or temporarily or if the Buyer ceases to operate any of its works in whole or in part, by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Buyer shall pay to the Seller compensation for any costs reasonably incurred or commitments made for work-in-progress or Services already performed at the time of termination or suspension which cannot be mitigated. Such compensation shall be restricted to the value of work above and shall be the sole remedy of the Seller for such termination or suspension. Under no circumstances shall the Buyer be liable under the Contract for any loss of anticipated profits or any consequential or indirect loss.

15.2 The Buyer shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith:

- (a) in the circumstances set out in condition 6.3(h) or (i); or
- (b) if any distress, execution or other process is levied upon any of the assets of the Seller; or
- (c) if the Seller's financial position is such that either the Seller, its directors, shareholders or creditors take or are entitled to take steps to institute formal insolvency proceedings with respect to the Seller of a type provided for by the Insolvency Act 1986 (or any similar or analogous legislation, whether under English law or otherwise), including without limitation administration, liquidation, administrative receivership, receivership, voluntary arrangement, scheme of arrangement or bankruptcy, or if the Seller is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (or any similar or analogous legislation, whether under English law or otherwise); or
- (d) the Seller ceases or threatens to cease to carry on its business.

15.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Buyer which accrued prior to termination. Conditions 3.5, 11 (*Insurance*), 9 (*Indemnity and Limitation of Liability*), 12 (*Confidentiality*), 13 (*The Buyer's Property*) and 14 (*Intellectual Property*) shall continue to be enforceable notwithstanding termination.

16. ASSIGNMENT

16.1 The Seller shall not be entitled to assign the Contract or any part of it without the prior written consent of the Buyer.

16.2 The Buyer may assign or transfer the Contract or any part of it and/or any rights and obligations arising under it (including the benefit of any

guarantee or warranty) to any person, firm or company and the Seller shall if required by the Buyer, enter into a novation agreement with the Buyer and the transferee or such other documentation as is necessary to give effect to any such assignment or transfer.

17. SUB-CONTRACTING

17.1 The appointment of sub-contractors or the performance of the Seller's obligations by or through any person other than the Seller shall be subject to the prior approval of the Buyer unless such other person is identified on the Purchase Order as acting in such capacity. However, the Buyer's approval shall not discharge the Seller in any respect from its duty properly and punctually to meet its obligations under the Contract and the Seller shall remain liable to the Buyer for any performance or non-performance of such obligations, whether by the Seller or any other Seller Party.

17.2 The Seller shall promptly and fully inform each other Seller Party as to the provisions contained in the Contract (including these conditions) which apply to them and shall ensure that each sub-contract with its sub-contractors and other arrangements with other Seller Parties ensure that such sub-contractors and Seller Parties are bound to such provisions of the Contract, as relevant as if those provisions were incorporated in that sub-contract.

17.3 If at any time during the Contract the Buyer is of the opinion that any Seller Party may or has breached any Law or may or has caused the Buyer to breach any Law, the Buyer shall be at liberty to object to any Seller Party being involved in the performance of the Contract either on the Site or in any other place. The Seller shall remove, or procure the removal of, that Seller Party from the provision of the Contract and/or any site of the Buyer as requested by the Buyer, and he shall not be again involved in the provision of the Contract without the written permission of the Buyer. Any removal or withdrawal of any Seller Party under this condition 17.3 shall not constitute a valid reason for the Seller's failure to supply the Goods and/or provide the Services in accordance with the Contract.

18. NOTICES

18.1 All notices shall be in writing to the address or fax number given in the Contract (or such other address, fax number as the Buyer may notify to the Seller and vice versa) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. With the exception of notices under conditions 6.3(h), 14.5 and 15, all notices may be served by email to the email address given in the Contract (or such other email address as the Buyer may notify to the Seller and vice versa). All notices shall refer to the Purchase Order number.

18.2 A notice is deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) in the case of fax, at the time of transmission provided a successful transmission report is received;
- (c) in the case of pre-paid first-class post or recorded delivery, 48 hours from the date of posting provided the envelope containing the notice was properly addressed and posted;
- (d) in the case of email, when sent, provided a delivery receipt is obtained; and

- (e) if deemed receipt under this condition 18 is not within business hours (meaning 9.00 am to 5.00 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery.

19. GENERAL

- 19.1** Each right or remedy of the Buyer under the Contract is without prejudice to any other right or remedy of the Buyer whether under the Contract or not and is in addition to any conditions implied in favour of the Buyer by Law.
- 19.2** If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 19.3** Failure or delay by the Buyer in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 19.4** Any waiver by the Buyer of any breach of, or any default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 19.5** The parties to the Contract do not intend that any term of the Contract other than condition 9.1 shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 19.6** If a dispute arises under the Contract, the Representatives shall meet to attempt in good faith to resolve such dispute. If they cannot resolve such dispute within 10 days (or such other period as they agree), the dispute shall be referred to the senior management of the Seller and the Buyer, who shall meet to attempt in good faith to attempt to resolve such dispute within a further 10 days.
- 19.7** The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law. The parties submit to the exclusive jurisdiction of the English courts, provided that the submission by the Buyer to the jurisdiction of the English courts shall not (and shall not be construed so as to) limit the right of the Buyer to bring legal proceedings in any other court of competent jurisdiction including without limitation the courts having jurisdiction by reason of the Seller's domicile. Legal proceedings by the Buyer in any one or more jurisdictions shall not preclude legal proceedings by it in any other jurisdiction whether by way of substantive action, ancillary relief, enforcement or otherwise. Prior to commencing legal proceedings, the Buyer and the Seller shall seek to resolve any dispute in accordance with condition 19.6 above.
- 19.8** The Seller shall not without the previous written consent of the Buyer advertise or, except for the performance of the Contract, make known to third parties the fact that the Seller supplies Goods or Services to the Buyer. The Seller shall not erect any advertisement or notice board (except for notices required to be displayed by statute or by the Contract) on any part of the Buyer's premises without first applying for and obtaining the Buyer's consent.

- 19.9** Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 19.10** The Contract constitutes the entire agreement between the Seller and the Buyer relating to the sale and purchase of the Goods and/or Services.
- 19.11** No amendment or variation of the Contract shall be effective unless it is expressly agreed by the Buyer in writing.
- 19.12** The Buyer reserves the right to refuse access to any Seller Party to the Buyer's premises. Access will only be granted to the extent necessary for the proper performance of the Seller's obligations.

Schedule 1

SERVICES PROVISIONS

1. COMMENCEMENT AND DURATION

The Services supplied under the Contract shall be provided by the Seller to the Buyer for the period specified in the Specification.

2. MODIFICATIONS

2.1 The Buyer may at any time instruct the Seller to modify the Services and the Seller shall be obliged to carry out such modified services where reasonably practicable in accordance with these conditions.

2.2 The Seller may only modify the Services with the written consent of the Buyer, having notified the Buyer in writing in advance of such modifications and the reasons therefor. The Buyer shall in its absolute discretion decide whether to accept any such modifications.

2.3 Where the Seller is of the opinion that the price payable under the Contract must be changed as a consequence of any modification to the Services pursuant to paragraphs 2.1 or 2.2 above it shall notify the Buyer of the need for a price change within 7 days of becoming aware of the proposed modification and shall notify the Buyer of the amount of the price change within a further 14 days, failing which an application at a later stage for approval of a price increase (if any) will not be accepted by the Buyer.

2.4 The Seller shall provide written justification for any price increase, which shall be calculated on the same basis as comparable Services under the Contract or, if there are no such Services, on a fair and reasonable basis.

3. CO-OPERATION

The Seller shall consult with other contractors providing services within the vicinity of the area in which the work is being undertaken and shall ensure that the performance of the work does not hinder or impede the provision of other services by any such contractors. In case of disputes in this respect between the Seller and any other such contractor, or if the Buyer objects to an arrangement made between the Seller and another such contractor, the Buyer's decision in this respect shall be conclusive and binding on the Seller.

4. SELLER TO INFORM HIMSELF

The Seller shall be deemed to have informed and satisfied himself fully as to the nature and extent of the Services including (but not by way of limitation) the physical condition of and around the Seller's premises so far as is practicable and the necessity for the Services meeting the performances and being suitable for purpose and therefore to have provided, unless expressly otherwise specified in the Contract, for all reasonably foreseeable eventualities in the Contract price.

5. EMPLOYMENT OF PERSONS

5.1 In order to ensure that the best possible labour relations shall be associated with the Contract, the Seller shall observe and comply with the provisions with regard to the employment of persons which are stated in this paragraph 5. Except where otherwise indicated below these provisions shall apply to all persons employed or engaged by the Seller or any Seller Party in the performance of the Contract, either on the Buyer's premises or in every factory or workshop used by the Seller or otherwise.

- 5.2** The Seller shall in respect of all persons employed or engaged by him in the provision of the Services pay rates of wages and observe hours and conditions of labour in accordance with the relevant national or local agreement between the Seller and the trade union(s) for the trade or industry in the district or premises where the Services are being executed (where applicable).
- 5.3** The Buyer shall be entitled if it so requires to have suitable certificates of competence from the Seller for any person employed or engaged in connection with the Services. The Seller shall procure that the Buyer is able to require any Seller Party performing the Services on the Site to undergo an alcohol and/or drug test. The Buyer shall be at liberty to object to any Seller Party being involved in the performance of the Services either on the Site or in any other place who shall in the opinion of the Buyer misconduct himself or be incompetent or negligent or fail to comply with any Law, works rule, procedure or policy, site condition, license or consent or fail an alcohol and/or drug test. The Seller shall remove, or procure the removal of, that person from the provision of the Services and/or any site of the Buyer as requested by the Buyer, and he shall not be again involved in the provision of the Services without the written permission of the Buyer. Any removal or withdrawal of labour under this paragraph 5.3 shall not constitute a valid reason for the Seller's failure to complete the Services in accordance with the Contract.
- 5.4** Prior to commencement of the Services the Seller shall state in respect of his site employees and the employees of any Seller Party:-
- (a) the name of employer's association, Regional Affiliation (if appropriate) and national agreement followed (and/or domestic agreement);
 - (b) the normal total weekly working hours on which his proposal was based;
 - (c) an indication of the rates which he proposes to pay for his various grades of labour, with details of number of persons to be employed, together with details of how these rates are made up and the amount of any variation from the terms of the national agreement stated in paragraph 5.4(a) above (the ratio in each trade of craftsmen to apprentices employed by the Seller on the Buyer's premises shall not exceed such rate as may be agreed with the Buyer);
 - (d) details of his domestic procedure for dealing with labour disputes and of any variances from the procedure contained in the national agreement referred to in paragraph 5.4(a) above; and
 - (e) details of any variances in holiday and sick pay arrangements from those stated in the national agreement referred to in paragraph 5.4(a) above. This information will be required before consent to any sub-contract may be given under the provisions of condition 17.
- 5.5** The Seller shall advise the Buyer in suitable time before entering into any commitment materially to alter pay or other conditions of employment or methods of working for the Seller's site workforce or those of any Seller Party's site workforce.
- 5.6** The Seller acknowledges that in preparing his tender he has allowed for Services to be carried out during a specified "standard working week" of the numbers of hours indicated in the Specification. Should the Seller for any

reason whatsoever wish to deviate from the standard working week, the approval in writing of the Buyer shall first be obtained. The cost of any additional premium time (or other costs) resulting from deviation from the standard working week shall be borne by the Seller. Premium time means the difference between the number of hours paid to the employee and the number of hours actually worked by that employee.

- 5.7** The Seller shall not be entitled to claim any extra payment or an extension of time for completing the Services by reason of any delay or increased cost to him through any failure or inability on the part of the Seller to obtain sufficient suitable labour at the times required to comply with the Contract or as a result of any action taken by the Buyer under this paragraph 5.
- 5.8** The Seller shall take part in and abide by the procedures of any consultative machinery set up by the Buyer to co-ordinate labour relations and conditions of employment. In particular the Seller will:-
- (a) observe (and ensure that any Seller Party observes) the terms and conditions of the national agreement relevant to his trade.
 - (b) have access to external procedures for the avoidance of labour disputes concerning his site workforce, be a member of the relevant federation, association or other employer organisation relevant to his trade and place the same requirement on his sub-contractors
 - (c) supply regular information to the Buyer concerning the Seller's forecast site manpower requirements, actual manning, earnings analyses and disputes relating to his site workforce, and supply similar information concerning his sub-contractors
 - (d) co-operate fully in any confidential audit by the Buyer or its agent of the Seller's site payrolls, method of payment and presence on the Buyer's premises of the Seller's workforce or in any similar audit of his sub- contractors
 - (e) inform the Buyer of the occurrence of any dispute on the Buyer's premises immediately and in writing within 24 hours of its incidence and of any significant dispute not on the Buyer's premises which could adversely affect the Contract or performance of the Services.
- 5.9** The Seller will provide during the period of the Contract all proper welfare and amenity facilities for his employees and will describe these in his tender.
- 5.10** The Seller shall not without the consent of the Buyer or of the provider of goods or services concerned knowingly take into employment any individuals employed or engaged by the Buyer or by any other provider of goods or services to the Buyer who is employed or engaged in connection with the Services.
- 5.11** Nothing in this Agreement shall be taken to mean that any individual employed or engaged in the provision of the Services by the Seller or any Seller Party is an employee, worker, officer or agent of the Buyer. The Seller shall be solely responsible for all matters relating to the employment or engagement of such individuals including compliance with all applicable laws. The Seller will be responsible for all income tax, national insurance contributions or social security charges or similar statutory payments in relation to all such individuals and ensure that they are deducted and/or paid to the relevant authorities and/or such individuals (as the case may be).

5.12 The Seller shall indemnify the Buyer against any costs, expenses, liabilities, damages and losses arising out of any claim, demand, action or proceeding made or brought by any of the individuals employed or engaged in the provision of the Services which arises or is alleged to arise out of any act of omission of the Seller (or any of its agents or subcontractors). The Seller shall further indemnify the Buyer for any liability for income tax, national insurance contributions and/or social security charges or similar statutory payments (or penalties or interests thereon) which may be found due from the Buyer in respect of any individuals employed or engaged in the provision of the Services. The Seller shall co-operate with the Buyer to ensure compliance with the Construction Industry Tax Scheme so far as applicable.

5.13 The Seller shall promptly on the Buyer's request fully and accurately disclose to the Buyer such details concerning the individuals employed or engaged in the provision of the Services and/or their terms and conditions of employment/engagement as the Buyer may require time to time.

5.14 The Seller shall indemnify the Buyer for itself and any future provider of goods and/or services to the Buyer against all and any costs, expenses, liabilities, damages and losses arising out of any claim, action, demand or proceeding which arises or is alleged to arise by virtue of the operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 in connection with the termination of this Agreement or the termination of the provision of any of the Services (including without limitation in relation to any dismissal or alleged dismissal of any individual employed or engaged or formerly employed or engaged in the provision of the Services).

6. THINGS FOUND ON SITE

All minerals, metals, objects and other things found or discovered on, under or around the Buyer's premises shall as between the Seller and the Buyer be the property of the Buyer and shall be dealt with as the Buyer shall direct.

7. SITE CONDITIONS

7.1 The Seller shall, at his own expense, provide all the temporary services and the equipment and other materials, labour, haulage, power, tools, tackle and apparatus necessary for the proper execution of the Services.

7.2 The Seller shall be responsible for the proper provision and maintenance of fencing, guarding, lighting and watching of all the Services on the Buyer's premises and for the proper provision and maintenance during the same period of temporary roadways, footways, guards and fences as far as the same may be rendered necessary by reason of the Services for the accommodation and protection of the Buyer and other persons engaged on the Buyer's premises and the owners and occupiers of adjacent property, the public and others.

7.3 The Seller shall be permitted to use for the execution of the Services those supplies of electricity, water, gas and any other services as may be from time to time made available to the Seller for that purpose on the Buyer's premises and the Seller shall pay to the Buyer a fair and reasonable sum (except where the Contract or the Buyer's site regulations otherwise provide) for their use. The Seller shall at his own expense provide any apparatus (including pipes, cables etc) necessary for utilising these supplies and shall be responsible for any loss or damage to persons or property caused by his use of these supplies. The Buyer shall not be liable for any supply failures.

8. TEMPORARY BUILDINGS

The Seller shall not erect any office, stores or other temporary building without the previous written consent of the Buyer and shall indemnify the Buyer from and against any general rate or other outgoings which may be charged or assessed on or in respect of the same. The Seller shall keep all buildings so erected in good repair and in a tidy condition.

9. INSURANCE OF SELLER'S EQUIPMENT

The Seller shall insure in the joint names of the Seller and the Buyer any equipment of the Seller brought onto the Buyer's works at full replacement value against all loss or damage with insurers and on terms approved by the Buyer and shall maintain that insurance in full force and effect throughout the term of the Contract.

Schedule 2

PROVISIONS RELATING TO HIRE OF CONTRACT STAFF

1. INTERPRETATION

In this Schedule 2:

Staff: means the persons who will provide the Services or any part of them on behalf of the Seller, whether or not employees of the Seller or any Seller Party, agency staff or otherwise and "Staff Member" means any of them. Staff and Staff Members shall be deemed to be Seller Parties for the purposes of the Contract.

2. COMMENCEMENT AND DURATION

The Services supplied under the Contract shall be provided by the Seller to the Buyer for the period specified in the Specification.

3. MODIFICATIONS

3.1 The Buyer may at any time instruct the Seller to modify the Services and the Seller shall be obliged to carry out such modified Services where reasonably practicable in accordance with these conditions. If any instruction of the Buyer is communicated in a manner other than in writing, the Buyer shall subsequently confirm such instruction in writing.

3.2 The Seller may only modify the Services with the written consent of the Buyer, having notified the Buyer in writing in advance of such modifications and the reasons therefor. The Buyer shall in its absolute discretion decide whether to accept any such modifications.

3.3 Where the Seller is of the opinion that the price payable under the Contract must be changed as a consequence of any modification to the Services pursuant to paragraphs 3.1 or 3.2 above it shall notify the Buyer of the need for a price change within 7 days of becoming aware of the proposed modification and shall notify the Buyer of the amount of the price change within a further 14 days, failing which an application at a later stage for approval of a price increase (if any) will not be accepted by the Buyer.

3.4 The Seller shall provide written justification for any price increase, which shall be calculated on the same basis as comparable Services under the Contract or, if there are no such Services, on a fair and reasonable basis.

4. CO-OPERATION

The Seller shall consult with other contractors providing services within the vicinity of the area in which the work is being undertaken and shall ensure that the performance of the work does not hinder or impede the provision of other services by any such contractors. In case of disputes in this respect between the Seller and any other such Seller, or if the Buyer objects to an arrangement made between the Seller and another such contractor, the Buyer's decision in this respect shall be conclusive and binding on the Seller.

5. SELLER TO INFORM HIMSELF

The Seller shall be deemed to have informed and satisfied himself fully as to the nature and extent of the Services including (but not by way of limitation) the physical condition of and around the Buyer's premises so far as is practicable and the necessity for the Services meeting the performances and being suitable for purpose and therefore to have provided, unless expressly otherwise specified in the Contract, for all reasonably foreseeable eventualities in the Contract price.

6. EMPLOYMENT OF PERSONS

- 6.1** In order to ensure that the best possible labour relations shall be associated with the Contract, the Seller shall observe and comply with the provisions with regard to the employment of persons which are stated in this paragraph 6. Except where otherwise indicated below these provisions shall apply to all persons employed or engaged by the Seller or any Seller Party in the performance of the Contract, either on the Buyer's premises or in every factory or workshop used by the Seller or otherwise.
- 6.2** The Seller shall in respect of all persons employed or engaged by him in the provision of the Services pay rates of wages and observe hours and conditions of labour in accordance with the relevant national or local agreement between the Seller and the trade union(s) for the trade or industry in the district or premises where the Services are being executed (where applicable).
- 6.3** The Buyer shall be entitled if it so requires to have suitable certificates of competence from the Seller for any person employed or engaged in connection with the Services. The Seller shall procure that the Buyer is able to require any Seller Party performing the Services on the Site to undergo an alcohol and/or drug test. The Buyer shall be at liberty to object to any Seller Party being involved in the performance of the Services either on the Site or in any other place who shall in the opinion of the Buyer misconduct himself or be incompetent or negligent or fail to comply with any Law, works rule, procedure or policy, site condition, license or consent or fail an alcohol and/or drug test. The Seller shall remove, or procure the removal of, that person from the provision of the Services and/or any site of the Buyer as requested by the Buyer and he shall not be again involved in the provision of the Services without the written permission of the Buyer. Any removal or withdrawal of labour under this paragraph 6.3 shall not constitute a valid reason for the Seller's failure to complete the Services in accordance with the Contract.
- 6.4** Prior to commencement of the Services the Seller shall state in respect of the Staff:-
- (a) the name of employer's association, Regional Affiliation (if appropriate) and national agreement followed (and/or domestic agreement);
 - (b) the normal total weekly working hours on which his proposal was based;
 - (c) an indication of the rates which he proposes to pay for his various grades of labour, with details of number of persons to be employed, together with details of how these rates are made up and the amount of any variation from the terms of the national agreement stated in paragraph 5.4(a) above (the ratio in each trade of craftsmen to apprentices employed by the Seller on the Buyer's premises shall not exceed such rate as may be agreed with the Buyer);
 - (d) details of his domestic procedure for dealing with labour disputes and of any variances from the procedure contained in the national agreement referred to in paragraph 6.4(a) above; and
 - (e) details of any variances in holiday and sick pay arrangements from those stated in the national agreement referred to in paragraph

5.4(a) above. This information will be required before consent to any sub-contract may be given under the provisions of condition 17.

- 6.5** The Seller shall advise the Buyer in suitable time before entering into any commitment materially to alter pay or other conditions of employment or methods of working for the Staff.
- 6.6** The Seller acknowledges that in preparing his tender he has allowed for Services to be carried out during a specified "standard working week" of the numbers of hours indicated in the Specification. Should the Seller for any reason whatsoever wish to deviate from the standard working week, the approval in writing of the Buyer shall first be obtained. The cost of any additional premium time (or other costs) resulting from deviation from the standard working week shall be borne by the Seller. Premium time means the difference between the number of hours paid to the employee and the number of hours actually worked by that employee.
- 6.7** The Seller shall not be entitled to claim any extra payment or an extension of time for completing the Services by reason of any delay or increased cost to him through any failure or inability on the part of the Seller to obtain sufficient suitable labour at the times required to comply with the Contract or as a result of any action taken by the Buyer under this paragraph 6. The hourly, daily or weekly rates and the rates for overtime specified in the Purchase Order shall apply only in respect of the hours, days or weeks (as the case may be) actually worked by each Staff Member in the provision of Services and no payment shall be due in respect of any time not so worked, including, without limitation, time taken from meal breaks, sickness or other leave of absence and holidays.
- 6.8** The Seller shall take part in and abide by the procedures of any consultative machinery set up by the Buyer to co-ordinate labour relations and conditions of employment. In particular the Seller will:-
- (a) observe (and ensure that any Seller Party observes) the terms and conditions of the national agreement relevant to his trade;
 - (b) have access to external procedures for the avoidance of labour disputes concerning the Staff, be a member of the relevant federation, association or other employer organisation relevant to his trade and place the same requirement on his sub-contractors;
 - (c) supply regular information to the Buyer concerning the Seller's forecast site manpower requirements, actual manning, earnings analysis and disputes relating to the Staff, and supply similar information concerning his sub-contractors;
 - (d) co-operate fully in any confidential audit by the Buyer or its agent of the Seller's site payrolls, method of payment and presence on the Buyer's premises of the Seller's workforce or in any similar audit of his sub- contractors; and
 - (e) inform the Buyer of the occurrence of any dispute on the Buyer's premises immediately and in writing within 24 hours of its incidence and of any significant dispute not on the Buyer's premises which could adversely affect the Contract or performance of the Services.
- 6.9** The Seller shall not without the consent of the Buyer or of the provider of goods or services concerned knowingly take into employment any individuals employed or engaged by the Buyer or by any other provider of

goods or services to the Buyer who is employed or engaged in connection with the Services.

- 6.10** Nothing in this Contract should be taken to mean that Staff Member is an employee, worker, officer or agent of the Buyer. The Seller shall be solely responsible for all matters relating to the employment or engagement of such individuals including compliance with all applicable laws. The Seller will be responsible for all income tax, national insurance contributions or social security charges or similar statutory payments in relation to all such Staff Members and ensure that they are deducted and/or paid to the relevant authorities and/or such individuals (as the case may be).
- 6.11** The Seller shall indemnify the Buyer against any costs, expenses, liabilities, damages and losses arising out of any claim, demand, action or proceeding made or brought by any Staff Member which arises or is alleged to arise out of any act of omission of the Seller (or any of its agents or subcontractors). The Seller shall further indemnify the Buyer for any liability for income tax, national insurance contributions and/or social security charges or similar statutory payments (or penalties or interests thereon) which may be found due from the Buyer in respect of Staff Member.
- 6.12** The Seller shall indemnify the Buyer against any costs, expenses, liabilities, damages and losses arising out of any claim, demand, action or proceeding made or brought by any employee, worker, officer or agent of the Buyer who is not a Staff Member and which arises or is alleged to arise out of any act of omission of a Staff Member and/or the Seller (or any of its agents or subcontractors).
- 6.13** The Seller shall indemnify the Buyer against any costs, expenses, liabilities, damages and losses arising out of any claim, demand, action or proceeding made, be it civil or criminal, and brought by any government agency or regulatory body, including but not limited to the Health and Safety Executive, which arises or is alleged to arise out of any act of omission of a Staff Member, and/or the Seller (or any of its agents or subcontractors). The indemnity in this paragraph 6.13 shall not apply to the amount of any fine paid by the Buyer but shall include all costs, expenses, liabilities, damages and losses arising out of the claim, demand, action or proceeding which gave rise to the fine.
- 6.14** The Seller shall promptly on the Buyer's request fully and accurately disclose to the Buyer such details concerning Staff and/or their terms and conditions of employment/engagement as the Buyer may require time to time.
- 6.15** The Seller shall indemnify the Buyer against any costs, expenses, liabilities, damages and losses arising out of any claim, demand, action or proceeding made or brought by any Staff Member which arises or is alleged to arise as a result of his asserting that he is or was an employee or worker of the Buyer.
- 6.16** The Seller shall indemnify the Buyer for itself and any future provider of goods and/or services to the Buyer against all and any costs, expenses, liabilities, damages and losses arising out of any claim, action, demand or proceeding which arises or is alleged to arise by virtue of the operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 in connection with the termination of this Contract or the termination of the provision of any of the Services (including without limitation in relation to any dismissal or alleged dismissal of any Staff Member or former Staff Member).

7. THINGS FOUND ON SITE

All minerals, metals, objects and other things found or discovered on, under or around the Buyer's premises shall as between the Seller and the Buyer be the property of the Buyer and shall be dealt with as the Buyer shall direct.

8. SITE CONDITIONS

The Seller shall, at his own expense, provide all the temporary services and the equipment and other materials, labour, haulage, power, tools, tackle and apparatus necessary for the proper execution of the Services.

9. TEMPORARY BUILDINGS

The Seller shall not erect any office, stores or other temporary building without the previous written consent of the Buyer and shall indemnify the Buyer from and against any general rate or other outgoings which may be charged or assessed on or in respect of the same. The Seller shall keep all buildings so erected in good repair and in a tidy condition.

10. INSURANCE OF SELLER'S EQUIPMENT

The Seller shall insure in the joint names of the Seller and the Buyer any equipment of the Seller brought onto the Buyer's works at full replacement value against all loss or damage with insurers and on terms approved by the Buyer and shall maintain that insurance in full force and affect throughout the term of the Contract.

11. SELLER'S RESPONSIBILITIES

11.1 The Seller will procure that each Seller Party shall comply with the terms of this Contract insofar as they are applicable to that Seller Party. In particular, but without prejudice to the generality of the foregoing, the Seller will procure that each Seller Party:-

- (a) is engaged on terms which oblige him to comply with the terms of this Contract insofar as they relate to him before commencing Services on any Site;
- (b) is aware of the requirements of this Contract insofar as they relate to him;
- (c) complies with all lawful and reasonable directions (both general and specific) of the Buyer and the Buyer's site regulations and general rules applicable to the Buyer's own employees on any Site;
- (d) reports any defects or damage of which he is aware in, or to, any premises plant, equipment, custody or control of the Buyer; and
- (e) reports any accident which has caused injury or death to any person and any incident which, if repeated, may reasonably be expected to cause injury.

11.2 The Seller shall procure that the Staff shall:-

- (a) have the requisite and necessary skills and experience to carry out the Services and, without prejudice to the generality of the foregoing, have the qualifications and experience (if any) specified in the Purchase Order; and
- (b) have sufficient, adequate and well maintained plant, equipment, (including, without limitation, safety clothing and equipment) machinery and tools to carry out the Services save to the extent the same are supplied by the Buyer pursuant to paragraph 12.4 below.

- 11.3** Seller hereby acknowledges:-
- (a) that he has a written health and safety policy to the extent required by Section 2(3) of the Health and Safety at Work Act 1974, and that the Seller will comply with all other requirements under the 1974 Act and any other health and safety legislation, as may be required from time to time.
 - (b) that he is self employed within the meaning of that Act and that the Staff are his (i) employees, (ii) partners, (iii) sub-contractors or (iv) employees of such partners or sub-contractors;
 - (c) that he is familiar with the risks involved in, or arising out of, the Services in connection with the activities of Staff and has taken cognisance of any additional expense to the Seller as a result of mitigating or minimising such risks;
 - (d) that he has satisfied himself as to the condition, fitness for purpose and safety of the premises, plant, equipment, machinery and tools supplied by the Buyer pursuant to this Contract and as to the extent and nature of the Services to be supplied by him and/or the Staff hereunder.
- 11.4** Before each Staff Member commences any Services, the Seller will do all that is reasonable in the circumstances and make all necessary inquiries to ensure that the Staff Member is honest, reliable, eligible to work in the United Kingdom and will comply with any legal requirements including but not limited to requirements under the Immigration Asylum and Nationality Act 2006 and the Seller will take special care where the nature of the Services to be provided by the Staff Member, or the circumstances in which they are to be provided, are such that particular trust and confidence in that Staff Member might reasonably be required by the Buyer.
- 11.5** The Seller warrants that he holds a current Licence (if so required) under the Employment Agencies Act 1973 and the Seller, where relevant, confirms that it will operate in relation to the Contract as an Employment Business as defined within the Conduct of Employment Agencies and Employment Businesses Regulations 2003.
- 11.6** The Seller warrants that it shall comply with all terms of the Agency Workers Regulations 2010 as amended from time to time (the "Regulations") and shall indemnify the Buyer and keep the Buyer indemnified against any costs, expenses, liabilities and losses arising out of any claim, demand, action or proceeding made or brought by any Staff member or ex-Staff Member (whether brought against the Buyer or the Seller) which arises or is alleged to arise out of any breach of the Regulations.
- 12.** BUYER'S RESPONSIBILITIES
- 12.1** Subject to the Seller's responsibilities pursuant to paragraph 11 above, the Buyer shall provide reasonable and safe working conditions and working accommodation for the Staff.
- 12.2** Staff shall have access (but not exclusive access) only to such parts of the Site as are reasonably necessary for the purposes of performing the Services and to such other parts of the Site as the Buyer may expressly authorise.
- 12.3** Staff shall be permitted to enjoy canteen, medical, first-aid facilities, mess facilities, parking, shower rooms and lockers to the extent that such facilities are provided by the Buyer for comparable employees of the Buyer at the Site provided that:-

- (a) in the case of canteen facilities, no subsidy provided by the Buyer to its own employees shall be provided to Staff Members who shall be required to pay the full cost of those facilities;
 - (b) in the case of medical or first-aid facilities, the Buyer may charge the Seller for the cost of any medical or first-aid treatment provided to a Staff Member; and
 - (c) the Buyer shall have no liability to the Seller or any Staff Member for any loss, damage, cost, expense, injury or death resulting from any Staff Member's use of those facilities and the Seller shall indemnify and save harmless the Buyer from and against any loss, damage, cost or expense resulting from any claim made by a Staff Member or any third party arising out of such use.
- 12.4** The Buyer will provide and maintain such plant, equipment, machinery, tools and materials and allow the use of such gas, electricity and water supply that is available at the Site if, and to the extent that, the same are specified in the Purchase Order and are necessary for the performance of the Services.
- 13. RATES**
- 13.1** Any lump sum or rates specified in the Purchase Order are deemed to include all employment costs for each Staff Member including, without limitation, wages and other remuneration, taxation (other than value added tax payable in connection with the Services), sickness benefits, National Insurance Contributions and payments in respect of other insurances, pension and social security contributions, holidays with pay, training levies, subsistence or lodging allowance, and expenses of travel outside the Site, none of which shall be borne by the Buyer.
- 13.2** For the avoidance of doubt, the Seller is solely responsible for the administration required in connection with the matters referred to in paragraph 13.1 above including the deduction and payment of any employee contributions.
- 14. TIME SHEETS**
- 14.1** Where payment is to be made on the basis of hourly, daily, weekly or monthly rates for each hour, day, week or month of Services, the Seller will, as required by the Buyer:-
- (a) supply each Staff Member with a time sheet and will procure that the Staff Member records on the time sheet the hours worked by him in the provision of Services; and/or
 - (b) procure that each Staff Member clocks in and out at the appropriate time office at the Site.
- 14.2** If accurate, each time sheet shall be countersigned by an authorised representative of the Buyer.
- 14.3** Each invoice, which the Seller submits, shall be supported, if applicable, by a time sheet or time sheets for each Staff Member signed by that Staff Member and countersigned by an authorised signatory of the Buyer.
- 15. REPLACEMENT OF STAFF MEMBERS**
- The Buyer shall be at liberty to require the removal and/or replacement of any Staff Member without giving any reason whereupon the Seller shall procure the immediate removal of that Staff Member from the Site and (if

so required) his prompt replacement with another person in accordance with this Contract.

16. PERIOD AND TERMINATION

16.1 In addition to the termination rights under condition 15.2 (Termination and Supervision), the Buyer may terminate the Contract if the Seller is in breach of any term or condition of this Contract.

16.2 Where the Purchase Order provides that the Buyer shall make payment by lump sum or rate for a period and this Contract is terminated pursuant to a notice given under sub-clause (2) above then, without prejudice to any other right or remedy of the Buyer, the lump sum or rate otherwise payable in respect of the term of the Contract or the period in which the date of termination falls shall be reduced by an amount equal to the same proportion of that lump sum or rate as the proportion of the unexpired term of the Contract or period (as the case may be) remaining after the date of such termination bears to the proportion of that term of the Contract or period which has elapsed prior to the date of such termination.

Schedule 3

PROVISIONS RELATING TO THE PROVISION OF CONSULTANCY SERVICES

1. INTERPRETATION

In this Schedule 3:

Staff: means the persons who will provide the Services or any part of them on behalf of the Seller, whether or not employees of the Seller or any Seller Party, agency staff or otherwise and "Staff Member" means any of them. Staff and Staff Members shall be deemed to be Seller Parties for the purposes of the Contract.

2. COMMENCEMENT AND DURATION

The Services supplied under the Contract shall be provided by the Seller to the Buyer for the period specified in the Specification.

3. SELLER'S PROPER PERFORMANCE OF THE SERVICES

3.1 The Seller shall provide the Services to the reasonable satisfaction of the Buyer.

3.2 In the event that the Seller is proved to have failed to perform all of the Services in accordance with the express terms of the Contract the Seller shall at the option of the Buyer without prejudice to any other right or remedy of the Buyer, repay the Buyer the charge for such of the Services as have not been so performed (provided such charge shall have been paid to the Seller by the Buyer).

3.3 The Seller will provide the Services through the use of suitably qualified and experienced employees or agents.

4. TIME SHEETS

4.1 Where payment is to be made on the basis of hourly, daily, weekly or monthly rates for each hour, day, week or month of Services, the Seller will, as required by the Buyer, procure that each Staff Member records on a time sheet the hours worked by him in the provision of Services.

4.2 If accurate, each time sheet shall be countersigned by an authorised representative of the Buyer.

4.3 Each invoice, which the Seller submits, shall be supported, if applicable, by the relevant completed, countersigned time sheets.

5. TERMINATION

5.1 Without limitation the Buyer may by notice in writing immediately terminate this Contract if the Seller or any Staff Member:

- (a)** is incompetent, guilty of any serious or persistent negligence in the provision of the Services or is guilty of gross misconduct affecting the business of the Buyer;
- (b)** is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed), or is guilty of dishonesty or misconduct; or
- (c)** is guilty of any fraud or dishonesty or acts in any manner which in the opinion of the Buyer brings or is likely to bring the Seller or the Buyer or any affiliate of the Buyer into disrepute or is materially adverse to the interests of the Buyer or any affiliate of the Buyer.

5.2 Where the Contract is terminated, the Seller shall do all such acts as the Buyer may reasonably require to enable the orderly transfer of the provision of the Services to the Buyer or to a third party specified by the Buyer.

6. ACCESS TO THE SITE

The Seller shall have access (but not exclusive access) only to such parts of the Site as are reasonably necessary for the purpose of providing the Services and to such other parts as the Buyer may from time to time authorise. The Seller shall be responsible for ensuring that his employees do not enter any other part of the Site and that they make use only of such roads, routes and facilities as the Buyer may from time to time authorise.

7. NON-SOLICITATION

The Seller shall not without the consent of the Buyer or of the supplier concerned knowingly take into the employment workmen or other employees of the Buyer or from any other supplier employed by the Buyer in providing similar or comparable services to the Services.

8. KEY PERSON(S)

8.1 In the event that any one or more of those persons named as key persons in the Contract cease to be employed by the Seller in connection with the performance of the Services, the Buyer shall be entitled to terminate the Contract upon giving 7 (seven) days written notice to the Seller.

8.2 In the event of such termination, the Seller shall be entitled to payment for that part of the Services actually performed as at the actual date of termination but shall be entitled to no further payment.

9. WAIVER OF MORAL RIGHTS

The Seller waives any moral rights in any works or inventions to which he is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such works or inventions or other materials, infringes the Seller's moral rights.

10. CONFLICTS OF INTEREST

The Seller agrees immediately to disclose to the Buyer any conflict of interest that arises, or may arise, in relation to the provision of the Services as a result of any past, present or future appointment, employment, engagement or other interest of the Seller, its employees or agents.

11. INSURANCE

11.1 In addition to the required insurances specified in condition 11, during the term of this Contract the Seller shall maintain in force with a reputable insurance company professional indemnity insurance for a minimum limit of £1,000,000.

12. EMPLOYMENT OF PERSONS

12.1 Nothing in this Contract shall be taken to mean that Staff Member is an employee, worker, officer or agent of the Buyer. The Seller shall be solely responsible for all matters relating to the employment or engagement of

such individuals including compliance with all applicable laws. The Seller will be responsible for all income tax, national insurance contributions or social security charges or similar statutory payments in relation to all such Staff Members and ensure that they are deducted and/or paid to the relevant authorities and/or such individuals (as the case may be).

- 12.2** The Seller shall indemnify the Buyer against any costs, expenses, liabilities, damages and losses arising out of any claim, demand, action or proceeding made or brought by any Staff Member which arises or is alleged to arise out of any act of omission of the Seller (or any of its agents or subcontractors). The Seller shall further indemnify the Buyer for any liability for income tax, national insurance contributions and/or social security charges or similar statutory payments (or penalties or interests thereon) which may be found due from the Buyer in respect of Staff Member.
- 12.3** The Seller shall indemnify the Buyer against any costs, expenses, liabilities, damages and losses arising out of any claim, demand, action or proceeding made or brought by any employee, worker, officer or agent of the Buyer who is not a Staff Member and which arises or is alleged to arise out of any act of omission of a Staff Member and/or the Seller (or any of its agents or subcontractors).
- 12.4** The Seller shall indemnify the Buyer against any costs, expenses, liabilities, damages and losses arising out of any claim, demand, action or proceeding made, be it civil or criminal, and brought by any government agency or regulatory body, including but not limited to the Health and Safety Executive, which arises or is alleged to arise out of any act of omission of a Staff Member, and/or the Seller (or any of its agents or subcontractors). The indemnity in this paragraph 12.4 shall not apply to the amount of any fine paid by the Buyer but shall include all costs, expenses, liabilities, damages and losses arising out of the claim, demand, action or proceeding which gave rise to the fine.
- 12.5** The Seller shall indemnify the Buyer against any costs, expenses, liabilities, damages and losses arising out of any claim, demand, action or proceeding made or brought by any Staff Member which arises or is alleged to arise as a result of his asserting that he is or was an employee or worker of the Buyer.
- 12.6** The Seller shall indemnify the Buyer for itself and any future provider of goods and/or services to the Buyer against all and any costs, expenses, liabilities, damages and losses arising out of any claim, action, demand or proceeding which arises or is alleged to arise by virtue of the operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 in connection with the termination of this Contract or the termination of the provision of any of the Services (including without limitation in relation to any dismissal or alleged dismissal of any Staff Member or former Staff Member).